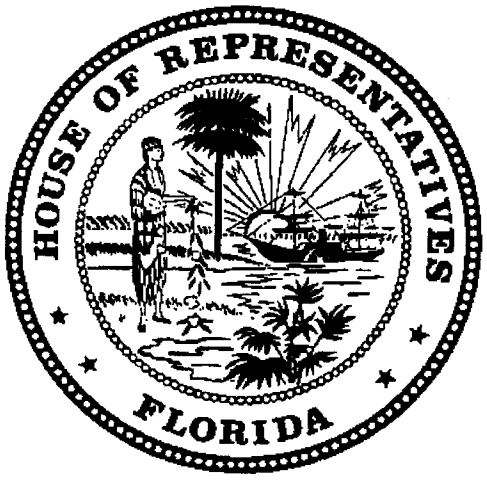

State Administration Appropriations Committee

Monday, April 17, 2006
3:00 p.m. – 4:00 p.m.
Room 12 HOB

Allan G. Bense
Speaker

Kimberly (Kim) Berfield
Chair

The Florida House of Representatives

Fiscal Council
State Administration Appropriations Committee

Allan G. Bense
Speaker

Kimberly (Kim) Berfield
Chair

Agenda
Monday, April 17, 2006
Time: 3:00 p.m. – 4:00 p.m.
Location: Room 12 HOB

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

HB 161 CS by Domino – Building Assessment and Remediation

HB 517 CS by Ross – Corporation Not For Profit Self-Insurance Funds

HB 957 CS by Anderson – Community Associations

HB 1109 by Smith – Title Loan Lenders

HB 1271 CS by Cannon – Division of Alcoholic Beverages and Tobacco

V. Closing Remarks

VI. Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 161 CS Building Assessment and Remediation
SPONSOR(S): Domino and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 1 N, w/CS	Livingston	Liepshutz
2) Insurance Committee	19 Y, 0 N, w/CS	Cooper	Cooper
3) State Administration Appropriations Committee		Rayman SR	Belcher MMB
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Currently, there are numerous companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. There are no licensure or regulatory requirements to be a mold assessor or mold remediator.

This bill provides education guidelines and certification for those who engage in business as a mold assessor or mold remediator. By January 1, 2007, the bill requires an assessor to maintain general liability and errors and omissions insurance of not less than $250,000. It requires a remediator to maintain a general liability insurance policy of not less than $500,000 with specific coverage for mold related claims. The bill does not require disclosure to the customer of compliance with the statutorily specified credentials to become a mold assessor or mold remediator. The bill requires that a contract to perform mold assessment or mold remediation must be signed or otherwise authenticated by the parties.

The bill provides various exemptions from the guidelines and operating requirements. Civil and criminal penalties are provided for violations. The bill has a "grandfather clause" to allow current operators to continue until July 1, 2008, without complying with the guidelines and operating requirements.

Currently, home inspectors are not regulated. "Home inspection" means a limited visual examination of systems and components for the purpose of providing a written professional opinion of the condition of a home.

The bill states that a person may not work as a home inspector unless that person has successfully completed a course of study of not less than 80 hours and passes a psychometrically valid examination in home inspections. The course of study must be accredited by a nationally recognized third-party independent accrediting entity.

The bill requires written disclosures be provided to customers. The statements must identify that the home inspector meets education and examination requirements and maintains commercial general liability insurance ($300,000), as well as, the scope of the home inspection and the approximate number of inspections conducted for a fee or the number of years of experience as a home inspector.

The bill will not have a significant fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government and **Ensure Lower Taxes** - The bill creates statutory certification and operational requirements for those who engage in the businesses of mold assessment, mold remediation, or home inspection. Civil and criminal penalties are provided for violations of the guidelines. Persons who engage in business with a focus on mold assessment or mold remediation or operate as a home inspector will incur the costs of education, insurance, certification, and operation requirements, as specified by the bill.

B. EFFECT OF PROPOSED CHANGES:

Background—Mold

Molds can be found anywhere indoors and outdoors and they can grow on virtually any substance when moisture is present. The Center for Disease Control has reported that people who are exposed to mold may experience a variety of illnesses. Individuals exposed to mold commonly report problems such as: allergy symptoms, nasal and sinus congestion, cough, breathing difficulties, sore throat, skin and eye irritation, and upper respiratory infections.

There are no federal or state standards for acceptable mold levels in buildings or homes and no pure scientific evidence that mold poses a lethal health threat. However, possible health-related illnesses and property damage due to mold exposure have caused a significant increase in the number of lawsuits filed throughout the country, sometimes resulting in multi-million dollar damage awards.

In Florida, there have been many lawsuits based on mold-related illnesses and alleged sick buildings. Responsibility for mold-related claims can include almost anyone involved in the construction and maintenance of a building, as well as real estate agents, prior owners, and management companies. Recovery of damages caused from mold depends on proof of actual damages and a determination of the cause of the mold contamination.

Currently, there are companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. However, there are no state guidelines or educational requirements to be a mold assessor or mold remediator. However, certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. In Florida, contractors are licensed by the Construction Industry Licensing Board (CILB) of the Department of Business and Professional Regulation (DBPR) under chapter 489, F.S.

Effect of Proposed Changes

This bill creates part XV of chapter 468, F.S., to provide guidelines for those who engage in business as a mold assessor or mold remediator.

This bill defines mold to mean "an organism of the class fungi that causes disintegration of organic matter and produces spores and includes any spores, hyphae, and mycotoxins produced by mold."

The bill defines "mold assessment" as the collection or analysis of a mold sample; the development of a mold-management plan or mold-remediation protocol; or an investigation or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold.

"Mold remediation" is defined as the removal, cleaning, sanitizing, demolition, or other treatment, of mold or mold-contaminated matter.

This bill provides education guidelines and certification for those who engage in business as a mold assessor or mold remediator. In order to work as a mold remediator, the bill requires a 2-year degree in microbiology, engineering, architecture, industrial hygiene, or a related field of science from an accredited institution, plus 1 year of documented field experience related to mold remediation. Alternatively, a remediator must possess a high school diploma or general equivalency diploma (GED), or have 2 years of documented field experience.

The education requirements for a mold assessor are the same as for a mold remediator. However, both the requirement for 1 or 2 years of field experience must relate to conducting microbial sampling or investigations. If a mold assessor or remediator does not meet the minimum standards for qualification, he or she must work under the "direct supervision" of someone who meets the minimum training requirements or has the required field experience.

The bill requires the certification programs to be accredited by a nationally recognized independent accrediting entity that sets programs and standards that comply with American Society for Testing and Materials Standard E1929-98, Standard Practice for Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, or the equivalent. The certification may come from "a not-for-profit industry association, society or [other] certification body or by a college or university that offers mold assessment training or education."

The bill requires an assessor to maintain general liability and errors and omissions insurance of not less than $250,000. It requires a remediator to maintain a general liability insurance policy of not less than $500,000 with specific coverage for mold related claims. Mold assessors and remediators must purchase the required insurance by January 1, 2007.

The bill provides various exemptions from the guidelines and operating requirements. The bill provides exemptions to these requirements if the person performing the assessment or remediation satisfies one of the following criteria: a residential property owner working on his or her own property; an owner, tenant, managing agent, or employee that works on owned or leased property; employee working for and supervised by the certified person; certain licensed professionals, such as contractors or engineers; those working on behalf of an insurer; individuals in the manufactured housing industry; or an employee of a governmental entity or school, who does not engage in mold assessment or remediation.

A disclosure to the customer of compliance with the statutorily specified credentials to become an assessor or remediator is not required by the bill. The bill does require a contract to perform mold assessment or mold remediation to be signed or otherwise authenticated by the parties and authorizes electronic contracts as well as hard copies.

The bill prohibits mold assessors from performing mold remediation or holding an interest in a mold remediation company, and vice versa. It provides criminal and civil penalties for violations of the guidelines. The bill has a "grandfather clause" to allow current operators to continue until July 1, 2008, when compliance with the guidelines is required.

Background—Home Inspections

Currently, home inspectors are not regulated. Although home inspectors are not regulated by any statute or agency, several professions dealing with construction are regulated. Regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, building code inspectors, and appraisers.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity for the purpose of determining whether a structure complies with the appropriate building code at the time of construction. By contrast, a home inspection is a discretionary endeavor, often contracted for after construction is complete. A home inspection is typically contracted for by a potential purchaser of a home, although home inspections are sometimes contracted for by the current owner of a home to determine its condition, by a homeowner about to sell a home who wishes to avoid potential problems, or by a purchaser of a new home who wants to ensure that the house was constructed properly. A home inspection is performed by private industry, rather than by local government.

Effect of Proposed Changes

The bill creates part XVI of chapter 468, F.S. The bill defines various terms, including:

- "Home" means any residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- "Home inspector" means any person who provides or offers to provide a home inspection for a fee or other compensation.
- "Home inspection" means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

The bill states that a person may not work as a home inspector unless that person has successfully completed a course of study of not less than 80 hours and passes a psychometrically valid examination in home inspections. The course of study must be accredited by a nationally recognized third-party independent accrediting entity.

The bill requires written disclosures to be provided to customers prior to contracting for or commencing a home inspection. The statements must identify that: the home inspector meets the education and examination requirements of the bill; the home inspector maintains the commercial general liability insurance policy required by the bill; the scope or parameters of the home inspection; and identify the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

A business entity may not provide home inspection services or use the title of home inspector(s) unless each of the home inspectors employed by the business satisfies the requirements of the bill. The bill specifies numerous exemptions from the requirements being imposed. These include,

1. A construction contractor licensed under chapter 489;
2. An architect licensed under chapter 481;
3. An engineer licensed under chapter 471;
4. A building code administrator, plans examiner, or building code inspector licensed under part XII of chapter 468;
5. A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of chapter 475;
6. An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration;
7. An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under chapter 482;
8. A fire safety inspector certified under s. 633.081;
9. An insurance adjuster licensed under part VI of chapter 626;
10. An officer appointed by the court;

11. A master septic tank contractor licensed under part III of chapter 489;
12. A certified energy auditor performing an energy audit of any home or building conducted under chapter 366 or rules adopted by the Public Service Commission; and
13. Individuals in the manufactured housing industry.

The bill further specifies that a home inspector must maintain a commercial general liability insurance policy in an amount of not less than $300,000. The bill allows a home inspector to provide estimates related to the cost of repair of an inspected property.

The bill prohibits various actions by a home inspector, including: any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report; inspect for a fee any property in which the inspector or the inspector's company has any financial interest; pay for the referral of any business to the inspector or the inspection company; and make an omission or prepare a report in which the inspection or the fee is contingent upon either the conclusions in the report, pre-established findings, or the close of escrow.

It provides criminal and civil penalties for violations. The bill has a "grandfather clause" to allow current home inspectors to continue to operate until January 1, 2008, if the inspector:

- has successfully completed high school or its equivalent or has been in the business of home inspection services for at least 5 years;
- has been engaged in the practice of home inspection for compensation for at least 3 years prior to January 1, 2007; and
- has performed not fewer than 250 home inspections for compensation.

The bill specifies that compliance with the new statutory guidelines is required as of January 1, 2008.

The effective date of the bill, except as otherwise provided, is July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates part XV of chapter 468, F.S., and provides statutory requirements to operate as a mold assessor or mold remediator.

Section 2. Creates part XVI of chapter 468, F.S., and provides statutory requirements to operate as a home inspector.

Section 3. Provides an effective date of July 1, 2006, although some provisions of the bill have a different effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who engage in business with a focus on mold assessment or mold remediation or operate as a home inspector will incur the costs of education, certification, insurance, and operation requirements, as specified by the bill. These costs are unknown at this time.

D. FISCAL COMMENTS:

It is not anticipated that the bill would have a significant fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not seem to require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not seem to reduce the percentage of a state tax shared with counties or municipalities. The bill does not seem to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2005 Regular Session, HB 315 was adopted to provide for certification of mold assessors and mold remediators, as well as, home inspectors. It also provided for statutory operational requirements, for insurance requirements, and authorized civil penalties under the Florida Deceptive and Unfair Trade Practices Act. Governor Bush vetoed HB 315.

The Governor stated his concern that the bill would have unintended consequences, including putting some legitimate and responsible employees out of business. Since the bill grandfathered some home inspectors but did not provide for the grandfathering of responsible and experienced mold assessors and remediators, the Governor stated that this will likely put employees and companies that cannot complete the bill's education and training requirements by January 1, 2006, out of business.

The Governor also stated that the bill was somewhat ambiguous and lacked clear guidance to the industry in some areas including, a lack of clear educational and examination requirements. While the bill required training, the Governor stated that there were no specifics regarding the kind of curriculum or standards necessary for home inspectors, mold assessors, or mold remediators. The Governor further stated that the bill appears to arbitrarily require high school and college degrees while presenting no clear reasons for the requirements.

Another question raised by the Governor was whether the mold-specific insurance policy required for mold assessors and a general liability insurance policy with a mold insurance pollution rider required for non-contracting mold remediators, both in an amount not less than

$1 million, would be available by the required date of October 1, 2005. The Governor stated that there was a further concern that this could have the unintended effect of allowing insurers to deny payments for mold claims under a homeowner policy if work on a home has been performed by a mold assessor or remediator.

Finally, the Governor indicated that he agreed with the bill's sponsors that additional consumer protection is warranted in these fields. He directed the Secretary of the Department of Business and Professional Regulation to work with the various stakeholders during the interim to develop proposed legislation. The department conducted workshops on mold assessment and remediation and a workshop on home inspections. The workshops culminated in a report issued on February 2, 2006, which highlighted the workshop discussions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Business Regulation Committee adopted a strike all amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

Includes home inspectors in the bill with similar credential requirements as the mold provisions;

Requires successful completion of a course of study of not less than 80 hours and passage of a psychometrically valid examination in home inspections; requires disclosures of credentials as a home inspector to the customer.

Provides for a breach of contract penalty rather than an Unfair and Deceptive Practice Act violation for mold operators;

Removes provisions relating to construction contractors conducting mold assessment and noncontracting mold remediators.

Reduces insurance coverage for mold assessors from $1 million to $250,000 and requires remediator coverage of $500,000.

At its April 5, 2006 meeting, the House Insurance Committee adopted several amendments to the bill. The major changes in the amendments include:

- Separating the education requirements for mold assessors from the requirements for mold remediators and specifying different requirements for each profession;
- Requiring mold assessors and remediators to purchase the required liability and errors and omissions insurance by January 1, 2007;
- Authorizing electronic and hard copies of contracts from mold assessors and remediators; and
- Changing the effective date from January 1, 2008, to July 1, 2006, except as otherwise provided in the bill.

This analysis has been updated to reflect the changes made by the amendments adopted by the Insurance Committee.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to building assessment and remediation; creating pt. XV of ch. 468, F.S., relating to regulation of mold assessment and mold remediation; providing legislative intent; providing definitions; providing requirements for practice of mold assessment or mold remediation; providing exemptions; providing for prohibited acts and penalties; providing insurance requirements; providing for contracts to perform mold assessment or mold remediation; providing a statute of limitations; providing a grandfather clause; creating pt. XVI of ch. 468, F.S., relating to regulation of home inspection services; providing definitions; providing requirements for practice; providing exemptions; providing prohibited acts and penalties; requiring liability insurance; exempting certain persons from duty to provide repair cost estimates; providing a statute of limitations; providing a grandfather clause; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part XV of chapter 468, Florida Statutes, consisting of sections 468.83, 468.831, 468.832, 468.833, 468.834, 468.835, 468.836, 468.837, and 468.838, is created to read:

468.83 Legislative intent.--It is the intent of the Legislature pursuant to s. 11.62 that professions and occupations covered by this part be regulated in a manner that does not unnecessarily restrict entry into such professions or occupations. The Legislature finds that this part provides a measure of protection for homeowners by providing education, experience, and testing requirements for persons in such professions or occupations necessary to protect homeowners' investments in their homes.

468.831 Definitions.--As used in this part, the term:

(1) "Mold" means an organism of the class fungi that causes disintegration of organic matter and produces spores, and includes any spores, hyphae, and mycotoxins produced by mold.

(2) "Mold assessment" means:

(a) An investigation or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(b) The development of a mold-management plan or mold-remediation protocol; or

(c) The collection or analysis of a mold sample.

(3) "Mold assessor" means any person who performs or directly supervises a mold assessment.

(4) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under chapter 489 unless performed by a person who is licensed under that chapter or the work complies with that chapter.

(5) "Mold remediator" means any person who performs mold remediation. A mold remediator may not perform any work that requires a license under chapter 489 unless the mold remediator is also licensed under that chapter or complies with that chapter.

468.832 Requirements for practice.--

(1) A person shall not work as a mold assessor or mold remediator unless he or she has evidence of, or works under the direct supervision of a person who has evidence of, the following:

(a)1. For a mold remediator, at least a 2-year degree in microbiology, engineering, architecture, industrial hygiene, or a related field of science from an accredited institution, along with a minimum of 1 year of documented field experience in a field related to mold remediation, or a high school diploma, a GED, or the equivalent with a minimum of 2 years of documented field experience in a field related to mold remediation.

2. For a mold assessor, at least a 2-year degree in microbiology, engineering, architecture, industrial hygiene, or a related field of science from an accredited institution, along with a minimum of 1 year of documented field experience in conducting microbial sampling or investigations, or a high school diploma, a GED, or the equivalent with a minimum of 2 years of documented field experience in conducting microbial sampling or investigations.

(b) A certification related to performing mold assessment or mold remediation, respectively. Such certification may be issued by a not-for-profit industry association, society, or certification body or by a college or university that offers mold assessment training or education. Qualified certification programs shall be accredited by a nationally recognized independent accrediting entity that sets programs and standards that comply with American Society for Testing and Materials Standard E1929-98, Standard Practice for Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, or the equivalent.

(2) A business entity may not provide or offer to provide mold assessment or mold remediation services unless the business entity satisfies all of the requirements of this part.

468.833 Exemptions.--

(1) The following persons are not required to comply with this part with regard to any mold assessment:

(a) A residential property owner who performs mold assessment on his or her own property.

(b) An owner or tenant, or a managing agent or employee of an owner or tenant, who performs mold assessment on property owned or leased by the owner or tenant. This exemption does not apply if the managing agent or employee engages in the business of performing mold assessment for the public.

(c) An employee of a licensee who performs mold assessment while directly supervised by the mold assessor.

(d) Individuals or business organizations that are not specifically engaged in mold assessment but are acting within the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, or chapter 489, are acting on behalf of an insurer under part VI of chapter 626, or are individuals in the manufactured housing industry who are licensed under chapter 320.

(e) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, who meets the requirements of s. 468.832 and who is conducting mold assessment within the scope of that employment, as long as the employee does not hold out for hire or otherwise engage in mold assessment.

(2) The following persons are not required to comply with this part with regard to any mold remediation:

(a) A residential property owner who performs mold remediation on his or her own property.

(b) An owner or tenant, or a managing agent or employee of an owner or tenant, who performs mold remediation on property owned or leased by the owner or tenant so long as such

remediation is within the routine maintenance of a building structure. This exemption does not apply if the managing agent or employee engages in the business of performing mold remediation for the public.

(c) An employee of a mold remediator while directly supervised by the mold remediator.

(d) Individuals or business organizations that are not specifically engaged in mold remediation but that are acting within the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, or chapter 489, are acting on behalf of an insurer under part VI of chapter 626, or are individuals in the manufactured housing industry who are licensed under chapter 320.

(e) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, who meets the requirements of s. 468.832 and who is conducting mold remediation within the scope of that employment, as long as the employee does not hold out for hire or otherwise engage in mold remediation.

468.834 Prohibited acts; penalties.--

(1) A mold assessor, a company that employs a mold assessor, or a company that is controlled by a company that also has a financial interest in a company employing a mold assessor may not:

(a) Perform or offer to perform any mold assessment without complying with the requirements of this part.

(b) Perform or offer to perform any mold remediation to a structure on which the mold assessor or the mold assessor's company provided a mold assessment within the last 12 months.

(c) Inspect for a fee any property in which the assessor or the assessor's company has any financial or transfer interest.

(d) Accept any compensation, inducement, or reward from a mold remediator or mold remediator's company for the referral of any business to the mold remediator or the mold remediator's company.

(e) Offer any compensation, inducement, or reward to a mold remediator or mold remediator's company for the referral of any business from the mold remediator or the mold remediator's company.

(f) Accept an engagement to make an omission of the assessment or conduct an assessment in which the assessment itself, or the fee payable for the assessment, is contingent upon the conclusions of the assessment.

(2) A mold remediator, a company that employs a mold remediator, or a company that is controlled by a company that also has a financial interest in a company employing a mold remediator may not:

(a) Perform or offer to perform any mold remediation without complying with the requirements of this part.

(b) Perform or offer to perform any mold assessment as defined in s. 468.831.

(c) Remediate for a fee any property in which the mold remediator or the mold remediator's company has any financial or transfer interest.

(d) Accept any compensation, inducement, or reward from a mold assessor or mold assessor's company for the referral of any business from the mold assessor or the mold assessor's company.

(e) Offer any compensation, inducement, or reward to a mold assessor or mold assessor's company for the referral of any business from the mold assessor or the mold assessor's company.

(3) Any person who violates any provision of this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

(c) A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

468.835 Insurance.--

(1) Effective January 1, 2007, a mold assessor must maintain general liability and errors and omissions insurance coverage in an amount of not less than $250,000.

(2) Effective January 1, 2007, a mold remediator must maintain general liability insurance policy in an amount of not less than $500,000 that includes specific coverage for mold related claims.

468.836 Contracts.--A contract to perform mold assessment or mold remediation must be in a document or electronic record,

signed or otherwise authenticated by the parties. A mold assessment contract is not required to provide estimates related to the cost of repair of an assessed property. A mold assessment contract is not required to provide estimates.

468.837 Statute of limitations.--Chapter 95 governs the time at which an action to enforce an obligation, a duty, or a right arising under this part must be commenced.

468.838 Grandfather clause.--The provisions of this part shall become effective upon becoming law and shall allow for a period of 2 years after enactment in which persons currently performing mold assessment or mold remediation as described under this part have to complete the requirements of this part.

Section 2. Part XVI of chapter 468, Florida Statutes, consisting of sections 468.841, 468.842, 468.843, 468.844, 468.845, 468.846, 468.847, and 468.848, is created to read:

468.841 Definitions.--As used in this part, the term:

(1) "Home" means any residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.

(2) "Home inspector" means any person who provides or offers to provide a home inspection for a fee or other compensation.

(3) "Home inspection" means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including, but not limited to, the structure, electrical system, HVAC system, roof covering,

plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purpose of providing a written professional opinion of the condition of the home.

468.842 Requirements for practice.--

(1) A person may not work as a home inspector unless he or she:

(a) Has successfully completed a course of study of not less than 80 hours, which requires a passing score on a psychometrically valid examination in home inspections, and which includes, but is not limited to, each of the following components of a home: structure; electrical system; roof covering; plumbing system; interior components; exterior components; and site conditions that affect the structure, and heating, ventilation, and cooling systems. Courses of study prescribed under this section must be accredited by a nationally recognized third-party independent accrediting entity that sets programs and standards that ensure certificant competence.

(b) Annually completes 8 hours of continuing education related to home inspections.

(c) Discloses to the consumer in writing prior to contracting for or commencing a home inspection:

1. That the home inspector meets the education and examination requirements of this section.

2. That the home inspector maintains the commercial general liability insurance policy as required by this part.

3. The scope and any exclusions of the home inspection.

4. A statement of experience that includes either the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

(2) A business entity may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity satisfies all the requirements of this part.

(3) A business entity may not use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services unless each of the home inspectors employed by the business entity satisfies all the requirements of this part.

468.843 Exemptions.--The following persons are not required to comply with this part when acting within the scope of practice authorized by such license, except when such persons are conducting, producing, disseminating, or charging a fee for a home inspection or otherwise operating within the scope of this part:

(1) A construction contractor licensed under chapter 489.

(2) An architect licensed under chapter 481.

(3) An engineer licensed under chapter 471.

(4) A building code administrator, plans examiner, or building code inspector licensed under part XII of chapter 468.

(5) A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of chapter 475.

(6) An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration.

(7) An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under chapter 482.

(8) A firesafety inspector certified under s. 633.081.

(9) An insurance adjuster licensed under part VI of chapter 626.

(10) An officer appointed by the court.

(11) A master septic tank contractor licensed under part III of chapter 489.

(12) A certified energy auditor performing an energy audit of any home or building conducted under chapter 366 or rules adopted by the Public Service Commission.

(13) A mobile home manufacturer, dealer, or installer regulated or licensed under chapter 320 and any employees or agents of the manufacturer, dealer, or installer.

468.844 Prohibited acts; penalties.--

(1) A home inspector, a company that employs a home inspector, or a company that is controlled by a company that has a financial interest in a company employing a home inspector may not:

(a) Perform or offer to perform, prior to closing, for any additional fee, any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This paragraph does not apply to a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract.

(b) Inspect for a fee any property in which the inspector or the inspector's company has any financial or transfer interest.

(c) Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, or any broker or agent therefor, for the referral of any business to the inspector or the inspector's company.

(d) Accept an engagement to make an omission or prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon the conclusions in the report, the preestablished findings, or the close of escrow.

(2) Any person who violates any provision of this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

(c) A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

468.845 Insurance.--A home inspector must maintain a commercial general liability insurance policy in an amount of not less that $300,000.

468.846 Repair cost estimates.--Home inspectors are not required to provide estimates related to the cost of repair of an inspected property.

468.847 Statute of limitations.--Chapter 95 governs when an action to enforce an obligation, duty, or right arising under this part must be commenced.

468.848 Grandfather clause.--Until January 1, 2008, notwithstanding any other provision of this part, a person who meets the following criteria may work as a home inspector:

(1) Has successfully completed high school or its equivalent or has been in the business of home inspection services for at least 5 years.

(2) Has been engaged in the practice of home inspection for compensation for at least 3 years prior to January 1, 2007.

(3) Has performed of not fewer than 250 home inspections for compensation.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 517 CS
SPONSOR(S): Ross
TIED BILLS:

Corporation Not For Profit Self--Insurance Funds

IDEN./SIM. BILLS: SB 1966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) State Administration Appropriations Committee		Rayman SR	Belcher
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Pursuant to 624.462, F.S., commercial self-insurance funds can only be created by specified groups, including a not-for-profit trade association, industry association, or professional association of employers or professionals which has been organized for purposes other than that of obtaining or providing insurance. These funds are created for the purpose of pooling and spreading liabilities of its group members in any commercial property or casualty risk or surety insurance. Self-insurance funds can also be created by two or more employers for workers' compensation risks. Current law provides numerous requirements relating to the formation and regulation of self-insurance funds. The Office of Insurance Regulation (OIR) regulates self-insurance funds. Local governments are authorized under current law to form self-insurance funds, but only for workers' compensation purposes. Certain specified independent nonprofit colleges, universities, or secondary educational institutions are authorized to form self-insurance funds for property or casualty risks, workers' compensation risks, or for surety insurance. Self-insurance funds created by these entities do not have to comply with all the provisions in current law relating to self-insurance funds and thus are not subject to significant regulation by the OIR.

This bill provides that, notwithstanding any other provision of law, certain corporations not for profit may form a self-insurance fund to cover any property or casualty risk or surety insurance or worker's compensation risk. This authorization is predicated upon the fund: 1) having annual normal premiums in excess of $5 million; 2) having only members who receive at least 75 percent of its funding from governmental sources; 3) using a credentialed actuary to set rates that are not excessive, not inadequate or not discriminatory based on actuarial principles; 4) maintaining a continuing program of excess insurance coverage and reserve evaluation to protect the fund's financial stability; 5) submitting to the OIR annual audited financial statements; 6) having a governing body comprised entirely of corporation not for profit officials; and 7) using personnel to run the fund that have a minimum of 5 years' insurance experience.

The bill also exempts corporation not for profit self-insurance funds from many of the provisions in current law relating to self-insurance funds such as the solvency, reserve and financial reporting requirements pertaining to workers compensation self-insurance funds, as well as from the premium tax and participation in the Florida Self-Insurance Fund Guaranty Association. These exemptions will also preclude significant regulation of the newly created self-insurance funds by the OIR.

The Revenue Estimating Conference that met on April 7, 2006, estimated a recurring impact of negative $5.6 million on the General Revenue Fund for Fiscal Year 2006-07.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill exempts certain corporation not for profit from the current statutory requirements relating to formation and regulation of self-insurance funds, thus, preventing significant regulation of such funds by the Office of Insurance Regulation (OIR or office).

Ensure Lower Taxes: The bill exempts certain corporation not for profit self-insurance funds from the premium tax.

Safeguard Individual Liberty: Any inability of the self-insurance fund to pay claims could mean injured employees otherwise eligible for workers compensation benefits may not have medical and lost wage expenses paid; damaged property may go unrepaired; and fund participants may be drawn into costly litigation to personally defend against a liability claim.

Promote Personal Responsibility: The bill will place more responsibility for ensuring financial accountability and solvency on the corporation not for profit who participate in the self-insurance fund authorized by the bill.

B. EFFECT OF PROPOSED CHANGES:

Self-Insurance Funds

Sections 624.460-624.488, F.S. are known as the "Commercial Self-Insurance Fund Act." Self-insurance fund means both commercial insurance funds organized under s. 624.462, F.S., and group self-insurance funds organized under s. 624.4621, F.S. In general, self-insurance is the assumption of some or all of one's financial risk oneself, rather than paying an insurance company to assume it.[1]

Commercial Self-Insurance Funds

Commercial self-insurance funds may be authorized by the OIR to cover property or casualty or surety insurance risks. Such funds may be formed only by:

1) a not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated in Florida, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year;
2) a (medical malpractice) self-insurance trust fund organized pursuant to s. 627.357, F.S., and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section;
3) a group of 10 or more health care providers for purposes of providing medical malpractice coverage; or
4) a not-for-profit group comprised of no less than 10 condominium associations meeting certain requirements.[2]

In most cases, a commercial self-insurance fund must be operated by a board of trustees.[3] If formed pursuant to (1) or (3), above, the board of trustees must be responsible for appointing independent certified public accountants, legal counsel, actuaries, and investment advisers as needed; approving payment of dividends to members; and contracting with an administrator authorized under s. 626.88,

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[1] http://www.iii.org/ (last viewed on February 5, 2006).
[2] s 624.462(2)(a), F.S. (2005).
[3] s 624.462(2)(b), F.S. (2005).

F.S., to administer the affairs of the fund. For funds formed pursuant to (2) or (4) above, a majority of the trustees or directors must be owners, partners, officers, directors, or employees of one or more members of the fund.[4]

Requirements for commercial self-insurance funds also include:

1) a certificate of authority from the OIR;
2) an indemnity agreement binding each fund member to individual, several, and proportionate liability;
3) a plan of risk management which has established measures to minimize the frequency and severity of losses;
4) proof of competent and trustworthy persons to administer or service the fund;
5) an aggregate net worth of all members of at least $500,000;
6) a combined ratio of current assets to current liabilities of more than 1 to 1;
7) a deposit of cash or securities, or a surety bond, of $100,000;
8) specific and aggregate excess insurance with limits and retention levels satisfactory to the OIR;
9) a fidelity bond or insurance providing coverage of at least 10 percent of the funds handled annually by the fund;
10) a plan of operation designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles, and a statement by an actuary to that effect;
11) participation in the Florida Self-Insurance Fund Guaranty Association and
12) such additional information as the Financial Services Commission or the OIR reasonably requires.[5]

After the OIR issues a certificate of authority for a commercial self-insurance fund, additional requirements are imposed related to restrictions on premiums that may be written, annual reports, dividends, assessments, and approval of forms and rates.[6] Under current law a commercial self insurance fund is also subject to the premium tax, form and rate approval, and regulatory oversight regarding rehabilitation, liquidation, reorganization and conservation, and is required to participate in the Florida Self-Insurance Guaranty Association.[7]

Rates for commercial self-insurance funds may not be excessive, inadequate, or unfairly discriminatory and must be filed with the OIR for approval. [8] But, the standard for excessiveness is limited to a determination of whether the expense factors are not justified or are not reasonable for the benefits and services provided.[9] A fund has the burden of proving a rate filed is adequate if, during the first 5 years of issuing policies, the fund files a rate that is below the rate for loss and loss adjustment expenses for the same type and classification of insurance that has been filed by the Insurance Services Office and approved by the OIR.[10]

The Commercial Self-Insurance Fund Act also contains a provision which makes over 228 sections of the Florida Insurance Code applicable to the self-insurance funds.[11] Among those many provisions are laws relating to civil remedy and civil liability; accounting, assets and liabilities investments, administration of deposits, insurance field representatives and operations; unfair methods of competition and unfair or deceptive acts or practices; powers of department and office; cease and desist procedures and penalties; policyholders bill of rights claims administration; payment of

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[4] Id.

[5] s. 624.466, F.S. (2005). Participation in the Florida Self-Insurance Guaranty Association is mandated under s. 624.462, F.S (2005).

[6] s. 624.468, F.S. (2005); s. 624.470, F.S. (2005) relating to annual reports; s. 624.473, F.S. (2005) relating to dividends; s. 624.474, F.S. (2005) relating to assessments.

[7] s. 624.475, F.S. (2005) relating to premium tax; s. 624.477, F.S. (2005) relating to liquidation, rehabilitation, reorganization, and conservation; s. 624.480, F.S. (2005) relating to approval of forms; s. 624.482, F.S. (2005) relating to rate approval; s. 624.462, F.S. relating to participation in the Florida Self-Insurance Guaranty Association.

[8] s. 624.482, F.S. (2005).

[9] s. 624.482(2), F.S. (2005).

[10] s. 624.482(6), F.S. (2005).

[11] s. 624.488, F.S. (2005).

settlements; attorney's fees; insurance rates and contracts; motor vehicle and casualty contracts; professional liability claims and actions; reports by insurers and health care providers; and, as previously indicated, provisions relating to insurer insolvency; rehabilitation and liquidation; and the Florida Self-Insurance Fund Guaranty Association.

Group Self-Insurance Funds

Under s. 624.4621, F.S., two or more employers are allowed to pool their workers' compensation liabilities and form a self insurance fund for workers' compensation purposes. This type of self-insurance fund is called a group self-insurance fund. Such a fund must comply with administrative rules adopted by the Financial Services Commission[12] relating to reserve requirements, organization, and operation. The rules relating to reserve requirements are designed to insure the self-insurance fund can maintain financial solvency. Current law also requires workers' compensation self-insurance funds to carry reinsurance, unless the fund is comprised of state or local government employers.[13]

Current law establishes restrictions on dividend or premium refunds made by a workers' compensation self insurance fund.[14] Workers' compensation self-insurance funds are subject to the insurance premium tax, but at a reduced rate. The rate is reduced from 1.75 percent of the gross receipt of insurance premiums to 1.6 percent.[15] Workers' compensation self-insurance funds are subject to license taxes and premium receipt taxes.[16] Current law also requires workers' compensation self-insurance funds to participate in the Florida Self-Insurance Fund Guaranty Association (Association).[17] The Association will step in and pay workers' compensation claims of self-insurance funds that become insolvent.[18]

In addition to complying with the administrative rules for workers' compensation self-insurance established by the Financial Services Commission, a workers' compensation self-insurance fund must comply with administrative rules adopted by the Department of Financial Services (DFS) relating to the filing of reports by workers' compensation self-insurance funds.[19]

Local Government and Independent Educational Institution Self-Insurance Funds

Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for the purpose of securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent nonprofit colleges or universities may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under the workers' compensation law. Both the local government and education self-insurance funds have similar requirements which include:

- having annual premiums in excess of $5 million;
- maintaining excess insurance coverage and reserve to protect the financial stability of the fund;
- submitting annual audited fiscal year end-financial statements by an independent certified public accountant to the OIR; and
- having a governing body comprised entirely of local elected officials (in local government self-insurance funds) and independent educational institution officials (in educational self-insurance funds).

Proposed Changes Regarding Self-Insurance Funds

[12] The Financial Services Commission is comprised of the Governor and Cabinet.
[13] s. 624.4621(4), F.S. (2005).
[14] s. 624.4621(5), F.S. (2005).
[15] s. 624.4621(7), F.S. (2005); s. 624.509(1), F.S. (2005).
[16] s. 624.509(2), F.S. (2005).
[17] s. 624.4621(9), F.S. (2005).
[18] *See* s. 440.385(3)(a), F.S. (2005).
[19] s. 440.38(2)(b), F.S. (2005); *See* Chapter 69L-5, F.A.C. for the administrative rules relating to workers' compensation self-insurance funds.

This bill provides that, notwithstanding any other provision of law, any two or more corporation not for profit located in Florida and organized under Florida law may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under worker's compensation.[20] This authorization is predicated upon the fund:

1) having annual normal premiums in excess of $5 million;
2) having only members who receive at least 75 percent of its revenue from local, state, or federal government sources;
3) using a credentialed actuary to set rates that are not excessive, not inadequate or not discriminatory based on actuarial principles;
4) maintaining a continuing program of excess insurance coverage and reserve evaluation to protect the fund's financial stability;
5) submitting to the Office of Insurance Regulation annual audited financial statements;
6) having a governing body comprised entirely of corporation not for profit officials; and
7) using personnel to run the fund that have a minimum of 5 years' insurance experience.

The bill exempts corporation not for profit self insurance funds from the provisions in current law applicable to group self-insurance funds (i.e. those self-insurance funds covering workers' compensation risks only). The bill also exempts corporation not for profit self-insurance funds from the premium tax, license tax, and premium receipt tax. Additionally, the bill exempts these self-insurance funds from the rules promulgated by DFS relating to reports workers' compensation self-insurance funds must file with DFS.

The bill revokes the exemptions described above if the corporation not for profit self-insurance fund does not have annual normal premiums in excess of $5 million, does not have members who receive at least 75 percent of its funding from governmental sources, does not use a credentialed actuary to set rates that are not excessive, not inadequate or not discriminatory based on actuarial principles, does not maintain a continuing program of excess insurance coverage and reserve evaluation to protect the fund's financial stability, does not annually submit an audited fiscal year end financial statement to the Office of Insurance Regulation, does not have a governing body comprised entirely of corporation not for profit officials, and does not use personnel to run the fund that have a minimum of 5 years' insurance experience.

There is statutory precedent for allowing specific types of organizations to have less stringent statutory requirements relating to the formation and regulation of self-insurance funds. The statutory requirements for self-insurance funds formed by local governments or independent nonprofit colleges or universities are different than the requirements for other commercial self-insurance funds and are less restrictive.

The language of this bill is modeled after the existing statutory authorization for local governments and independent colleges and universities and, in fact, is mostly identical. However, there are several important differences in the language. Regarding local government, the language allowing the formation of self-insurance funds for workers' compensation purposes only contains the following:

> (3) Notwithstanding subsection (2), a local government self-insurance fund created under this section after October 1, 2004, shall initially be subject to the requirements of a commercial fund under s. 624.4621 and, for the first 5 years of its existence, shall be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively.
>
> (4)(a) A local government self-insurance fund formed after January 1, 2005, shall, for its first 5 fiscal years, file with the office full

[20] In the 2005 Session, HB 881 was filed giving certain nonprofit community mental health and substance abuse providers the authority to form self-insurance funds; however, the bill died in messages. This bill is very similar to the original text of HB 881 from the 2005 Session.

and true statements of its financial condition, transactions, and affairs. An annual statement covering the preceding fiscal year shall be filed within 60 days after the end of the fund's fiscal year, and quarterly statements shall be filed within 45 days after each such date. The office may, for good cause, grant an extension of time for filing an annual or quarterly statement. The statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used by insurers for financial statements, sworn to by at least two executive officers of the self-insurance fund. The form for financial statements shall be the form currently approved by the National Association of Insurance Commissioners for use by property and casualty insurers.

(b) Each annual statement shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries. Work papers in support of the statement of opinion must be provided to the office upon request.[21]

In other words, local government self-insurance funds must comply with current law governing self-insurance funds upon creation and for the first five years the fund is in existence. This involves significant oversight of the local government self-insurance fund by the OIR. Additionally, the OIR also reviews information on the local government self-insurance fund's financial status for the first five years the fund is in existence.

Self-insurance funds composed of independent colleges and universities also have less stringent formation and regulation requirements than other self-insurance funds. Even though this bill is modeled after existing law allowing these entities to self insure, there is a difference in the statutory language. Pursuant to s. 624.4623, F.S., only those educational institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or accredited schools chartered by the State of Florida are eligible to form self-insurance funds.

According to a representative of the Florida Independent Colleges and Universities Risk Management Association the prerequisite for accreditation requires their members submit to the rigorous programmatic and financial review of this federally sanctioned accrediting agency. This outside review ensures their pooled members are financially stable and have the appropriate resources to conduct their operations. The Federal government relies on this accreditation status for participation in all federally sponsored programs such as student financial aid, research contracts and other types of grants. Also, the colleges and universities rely on this accreditation status to be the primary test of an institution's financial strength.[22]

Among the financial and resource requirements necessary for good standing and membership are the following statements from the accrediting standards manual:

3.10 Financial and Physical Resources

1) The institution's recent financial history demonstrates financial stability.
2) The institution provides financial statements and related documents, including multiple measures for determining financial health as requested by the Commission, which accurately and appropriately represent the total operation of the institution.
3) The institution audits financial aid programs as required by federal and state regulations.

[21] s. 624.4622(4), F.S. (2005).

[22] Email from Ben Donatelli, Collaborative Ventures, Independent Colleges and Universities of Florida, March 19, 2005, on file with the Insurance Committee.

4) The institution exercises appropriate control over all its financial and physical resources.
5) The institution maintains financial control over externally funded or sponsored research and programs.
6) The institution takes reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.
7) The institution operates and maintains physical facilities, both on and off campus, that are adequate to serve the needs of the institution's educational programs, support services, and other mission-related activities

There is no provision in the bill requiring accreditation of corporation not for profit wanting to form a self-insurance fund.

Corporations not for profit that would qualify to form self-insurance funds under the bill include Hospice organizations, community actions agencies such as Head Start and Meals on Wheels, community transportation coordinators, the Florida Council on Aging, and the Association of Retarded Citizens. It is unknown how many corporations not for profit will qualify to form a self-insurance fund under the bill or will choose to self-insure; however, the bill's proponents estimate a premium base of $15 – 25 million for qualifying corporations not for profit.[23]

Although the bill allows corporations not for profit to create self-insurance funds for property, casualty, surety or workers' compensation risks, proponents of the bill envision the self-insurance funds created will cover primarily workers' compensation risks. In many cases the workers' compensation insurance premiums for non-profit organizations are higher than the filed premium rate which leads to high insurance premiums. Additionally, according to the bill's proponents, although workers' compensation insurance is currently available for corporations not for profit, in many cases, it is written by the Florida Workers' Compensation Joint Underwriting Association, the workers' compensation insurer of last resort. The bill's proponents predict the newly created corporation not for profit self insurance fund will assume some of the Florida Workers' Compensation Joint Underwriting Association's policies, leading to depopulation of it.

The bill's proponents allege corporations not for profit cannot comply with existing law relating to the formation and regulation of self-insurance funds because of the high costs involved in managing a commercial self-insurance fund due to the restrictions and regulation of the funds by the OIR. They also cite the lack of a single entity covering all corporations not for profit that can assume management of the fund thereby reducing the costs of complying with current self-insurance fund laws and the overhead associated with running a self-insurance fund as a reason corporations not for profit cannot comply with existing self-insurance fund laws.[24]

One of the organizations that may qualify to form a self-insurance fund under the bill is the Florida Council for Community Mental Health (Council). The Council is a statewide association of 70 community-based mental health and substance abuse agencies. According to the Council, availability of property, liability, automobile and workers' compensation insurance is limited for its members and members of its sister organization, the Florida Council for Behavioral Healthcare. The Council maintains its 70 member treatment organizations are a critical part of the state's safety net, providing publicly funded mental health and substance abuse services to Floridians who cannot afford the cost of their care. They report difficulty in obtaining insurance coverage that recognizes the type of services they provide and the risks to which they are exposed.[25] They also report a significant increase in

[23] Telephone conversation with representative of Public Risk Underwriters on February 3, 2006.
[24] Id.
[25] Florida Council for Behavioral Healthcare proposal "Community Mental Health and Substance Abuse Provider Self-Insurance Fund" on file with the Insurance Committee.

liability insurance premiums for community mental health providers.[26] If this bill passes, the Council anticipates self-insuring for property, automobile, general and professional liability, and workers' compensation insurance. The Council estimates 30-50 members will participate in the self-insurance fund.[27]

Regulatory Issues

In Florida, regulation of the insurance industry is shared by the DFS and the OIR. The state's Chief Financial Officer (CFO) heads DFS while the head of the OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, the OIR is responsible for granting a certificate of authority or license to an insurer; a domestic insurer, (i.e. an insurer based in Florida), must possess a certificate of authority in order to conduct business in Florida. Similarly, many insurers are required by law to seek the OIR approval for their rates, or the prices they charge for coverage, and approval of the insurance forms they use for issuing policies. The OIR investigates allegations of fraud against insurers and administers state laws governing the financial reserve requirements imposed on insurers.

The OIR is concerned the bill effectively removes any and all solvency and rate regulation oversight over the corporation not for profit self-insurance fund authorized by the bill. The OIR exercises solvency and rate regulation oversight in order to protect Florida's insurance consumers. According to the OIR, if a corporation not for profit self-insurance fund assumes significant risk, the fund may be unable to pay resulting claims due to an inadequate financial framework. Any inability to pay claims means injured employees otherwise eligible for workers compensation benefits may not have medical and lost wage expense paid; damaged property may go unrepaired; and fund participants may be drawn into costly litigation to personally defend against a liability claim.[28]

However, the OIR notes local governments and state/private universities have a level of institutional expertise and experience in operating risk management programs, in administering and adjusting claims against the fund, and, most importantly, an outside source of financial scrutiny beyond the governing board of the self insurance fund itself. A local government Board of County Commissioners, a City Council, a university Board of Trustees – all assume implicit financial and managerial oversight for a self-insurance fund organized for the benefit of the local government or state/private university. In contrast, in the OIR's view, there may be no oversight organization or entity that would stand behind a corporation not for profit self-insurance fund created in accordance with the bill.

Unlike a local government with the authority to raise tax revenue or issue bonds or the ability of a state/private university to raise tuition and fees, there is no clear source of outside revenue available for a corporation not for profit self-insurance fund in the event a deficit occurs. In order to raise funds, the corporation not for profit self insurance fund would have to raise revenue. Revenue sources for nonprofits include public donations and government funding. Raising additional revenue from these sources may be difficult and is not a guaranteed revenue stream.

Regarding the bill's creation of s. 624.4624(2), F.S., if the self insurance fund fails to comply with the provisions of the entire section, the fund defaults to regulation under s. 624.4621, F.S., -- regulation pertaining to group self-insurance funds writing only workers compensation insurance coverage. However, the bill allows corporation not for profit self-insurance funds to also write property, liability, and surety insurance coverage. The office notes the bill is silent with respect to a default regulation for the property, liability, or surety coverage being issued by the funds.

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[26] According to the Council, the average cost of liability insurance for a community mental provider was $238,847 in FY 2002–2003. The average cost in FY 2003-2004 was $355,715, an increase of 49%. But, for some providers, the increase in premiums was 150% or more.

[27] Florida Council for Behavioral Healthcare proposal "Community Mental Health and Substance Abuse Provider Self-Insurance Fund" on file with the Insurance Committee.

[28] Concerns expressed are contained in Office of Insurance Regulation's Legislative Analysis dated January 30, 2006 on file with the Insurance Committee.

Additionally, the OIR opines it could be difficult to determine the proper division of reserves related to the multiple lines of coverage provided by the fund in any type of forensic handling of the corporation not for profit self-insurance fund. This problem is not present with local government self-insurance funds because those funds provide only workers' compensation insurance coverage.

C. SECTION DIRECTORY:

Section 1: Creates s. 624.4264, F.S., allowing creation of corporation not for profit self-insurance funds, providing requirements for formation of such funds, providing exceptions to current statutory requirements for self-insurance funds.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill exempts corporations not for profit who form a self-insurance fund from paying the premium tax on their insurance policies. The Revenue Estimating Conference that met on April 7, 2006, estimated a recurring impact of negative $5.6 million on the General Revenue Fund for Fiscal Year 2006-07.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Inasmuch as the bill allows corporations not for profit to self-insure in lieu of obtaining insurance from a private insurance carrier, corporations not for profit may save money on insurance premiums.[29] The amount of premium dollars saved for each nonprofit is indeterminable. Additionally, if premiums collected by the self-insurance fund are not sufficient to pay claims and a deficit results, the fund's members must be assessed to cover the deficit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[29] The portion of the premium rate attributable to cover claims should be approximately the same as the portion charged by private insurers; however, premium rates for self-insurance funds typically do not include a profit factor (usually about 5 percent of premium). Additionally, self-insurance funds sometimes have less expense than private insurers. The absence of a profit factor built into premium rates and lower expenses could lead to premium rates for self-insurance funds that are lower than those of private insurers.

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds; does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not delegate rule-making authority to any administrative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

In its legislative analysis, the Office of Insurance Regulation provided the following technical comments[30]:

> The newly created SIF, as drafted in this legislation, does not contain the definition of "commercial" self-insurance fund (otherwise defined at 624.462). Thus, the provisions of 624.460 – 624.488 ("Commercial Self Insurance Funds") would not apply to this newly created SIF.
>
> And, the newly created SIF is, at subsection (2) of this bill, exempt from 624.4621 for purposes of definition and regulation as group self-insurance fund formed to provide workers compensation coverage.
>
> Thus, by construction of the statute, the newly created SIF appears regulated only by the specific provisions within its newly created statute, s. 624.4624. That construction:
>
> - Exempts the fund from any form of solvency requirement;
> - Does not provide the OIR with authority to protect member participants against inadequate rates and premium collection;
> - Does not contain requirements otherwise applicable to self-insurance funds – either those formed to provide self-insurance for workers compensation insurance or those formed for sharing property and casualty and surety risk; and,
> - Creates an ambiguity related to Guaranty Fund Protection – i.e.,:
>   - For risks associated with property/casualty and surety, it is not clear if the newly created SIF would qualify for FIGA protection, because at s. 624.462(5) a commercial self-insurance fund is required to participate in FIGA. This newly created SIF is not bound by the provisions of 624.462;
>   - For risks associated with workers compensation, s. 631.905(5) the FIGA workers compensation account may cover this SIF, because the definition of covered entities specifically excludes only local government

[30] Office of Insurance Regulation Legislative Analysis dated January 30, 2006 on file with the Insurance Committee. (emphasis supplied)

SIFs organized under s. 624.4622 (group self-insurance funds formed specifically for providing workers compensation benefits);

Subsection (1)
In describing the risk being assumed by the newly created SIF the term "securing the payment of benefits under Chapter 440" may mean the SIF intends to provide workers compensation coverage to its participants.

However, at subsection (2) the legislation specifically exempts the newly created SIF from the requirements that apply to group self-insurance funds at s. 624.4621, designed for SIFs that provide workers compensation insurance to member participants.

Subsection (1)(a) -- requires the fund to have "annual normal premiums in excess of $5 million"
It appears the newly created statute implies no OIR oversight of policy form or rate approval. Member participants would not benefit from the protections of form and rate approval that assure rates are not excessive, inadequate, or non-discriminatory and that contracts issued by the fund provide reasonable benefits for the risks being assumed by the fund.

Subsection (1)(b) – requires for participation that each member receive at least 75% of its revenues from local, state, or federal governmental sources. While such requirement may suggest that these revenues are more likely to be received on a more consistent basis, the ability of the SIF's members to fund any deficits is also constrained to the level of public funding.

Subsection (1)(c) - requires the fund, as determined by a qualified actuary, to maintain a program of excess insurance coverage. The actuary is also to provide a reserve evaluation – but not an actuarial opinion -- in light of the need to protect the financial stability of the fund. Subsection (1)(c) does not require rate development by a qualified actuary and does not require the fund to maintain reserves sufficient to meet the cost of risks associated with the coverage the fund will provide.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 7, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported the bill favorably. The strike-all amendment maintained the text of the original bill with the following additions:

- Requires the self-insurance fund to use an actuary to set rates that are not excessive, not inadequate, or not discriminatory and are based on actuarial principles.

- Requires the fund to purchase excess insurance to pay claims after a certain amount is paid on the claim by the fund.

- Requires the fund to use personnel with prior insurance experience to administer the fund.

The amendment also changed the name of the self-insurance fund from nonprofit organization self-insurance fund to corporation not for profit self insurance fund to maintain consistency with existing law. The staff analysis was updated to reflect the adoption of the amendment.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to corporation not for profit self-insurance funds; creating s. 624.4624, F.S.; authorizing two or more corporations not for profit to form a self-insurance fund for certain purposes; providing specific requirements; providing an exception; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 624.4624, Florida Statutes, is created to read:

624.4624 Corporation not for profit self-insurance funds.--

(1) Notwithstanding any other provision of law, any two or more corporations not for profit located in and organized under the laws of this state may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or

securing the payment of benefits under chapter 440, provided the corporation not for profit self-insurance fund that is created:

(a) Has annual normal premiums in excess of $5 million.

(b) Requires for qualification that each participating member receive at least 75 percent of its revenues from local, state, or federal governmental sources.

(c) Uses an actuary credentialed by the Casualty Actuarial Society or American Academy of Actuaries to determine rates. Rates and rating factors must be established using accepted actuarial principles to develop rates that are not excessive, inadequate, or discriminatory.

(d) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified, independent actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers.

2. Retain a maximum per-loss occurrence of 2 percent of normal premiums or $350,000, whichever is less.

(e) Submits to the office annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year.

(f) Has a governing body that is comprised entirely of corporation not for profit officials.

(g) Uses knowledgeable persons to administer or service the fund in claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas. Such persons

must have at least 5 years' experience with commercial self-insurance funds formed under s. 624.462, self-insurance funds formed under s. 624.4622, or with domestic insurers.

(2) A corporation not for profit self-insurance fund that meets the requirements of this section is not subject to s. 624.4621 and is not required to file any report with the department under s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. 624.4621. If any of the requirements of this section are not met, the corporation not for profit self-insurance fund is subject to the requirements of s. 624.4621.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 517 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Appropriations Committee

Representative(s) Ross offered the following:

Amendment (with title amendment)

Between line(s) 62 and 63 insert:

(3) Premiums, contributions, and assessments received by a corporation not for profit self-insurance fund are subject to ss. 624.509(1) and (2) and 624.5092, except that the tax rate shall be 1.6 percent of the gross amount of such premiums, contributions, and assessments.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 10 and insert:

requirements; providing an exception; providing for payment of insurance premium tax at a reduced rate by corporation not for profit self-insurance funds; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 957 CS Homeowners' and Community Associations
SPONSOR(S): Anderson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Blalock	Bond
2) State Administration Appropriations Committee		Rayman	Belcher
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration of condominium may be amended as provided in the declaration. This bill revises condominium association powers and provides that leaseholds and other possesory and use interests can only be acquired by means provided in the declaration of condominium or by approval of 3/4 of the voting interest instead of 2/3 of the voting interest provided in current law.

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill increases the regulation of homeowners' associations by:

- Providing that non-regulated homeowners' associations may use statutory provisions to revive expired covenants.
- Revising the requirements for providing information about a homeowners' association to a prospective purchaser or lienholder.
- Providing that homeowners' associations have the option of establishing reserve accounts in their annual budgets and providing requirements for funding the reserves.
- Expanding the deadline for preparing an annual financial report from 60 to 90 days after the close of the fiscal year.
- Allowing a fine to become a lien if it is for violating governing documents that have been recorded in the public record.
- Specifying that merger or consolidation of associations is not a material or adverse alteration of the voting interest.
- Requiring that the developer deliver the financial records of the association to the board at the time the members are entitled to elect a majority of the board of directors.
- Establishing guarantees of common expenses for homeowners associations.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases government regulation of community associations.

Promote personal responsibility -- This bill increases personal responsibility by allowing a fine for violating the governing documents of a homeowners' association to become a lien on member's parcel under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements".[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> "Strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community."[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.[5]

A homeowners' association is a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Covenant Revitalization

The governing documents in some Florida homeowners' associations provide for an expiration of the community covenants after a specified number of years. The Marketable Record Title Act, s. 712.05, F.S., will cause covenants to lapse by operation of law either where the covenants are silent as to expiration, or where the Marketable Record Title Act period is shorter than the stated expiration time. Residents in these communities have the option to revive the covenants after the expiration by following the procedural steps found in ss. 720.403 - 720.407, F.S. Currently, the covenant revitalization procedures contained in ss. 720.403 - 720.407, F.S., are not available to any homeowners' association not governed by ch. 720, F.S., such as associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 720.301(9), F.S.

use. Chapter 720, F.S., governs only residential homeowners' associations where membership is a mandatory condition for the owners of property upon which assessments are required and may become a lien on the parcel,[7] thus, non-mandatory associations may not revive covenants pursuant to ss. 702.403 - 702.407, F.S.

This bill creates s. 712.11, F.S., to provide that a homeowner's association that is not subject to ch. 720, F.S. may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S. This bill would allow homeowners' associations that are not regulated by ch. 720, F.S., to utilize the covenant revitalization procedures available to mandatory homeowners' associations.

Condominium Association Powers

Section 718.114, F.S., provides for the powers of a condominium association. Among other powers, an association has the authority to enter into agreements and acquire leaseholds, memberships, and other possesory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. All leaseholds, memberships, and other possesory or use interests existing or created at the time the declaration was recorded must be stated and fully described in the declaration. Following the recording of the declaration, the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possesory or use interests except as authorized by the declaration. If the declaration does not provide this authority, then the declaration can be amended if the amendment is approved by the owners of not less than 2/3 of the units.[8]

This bill amends s. 718.114, F.S., to provide that acquiring these leaseholds, memberships, or other possesory or use interests is a material alteration or substantial addition to association property, and the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possesory or use interests except as authorized by the provisions in s. 718.113, F.S. Section 718.113(2), F.S., provides that there can be no material alteration or substantial additions to the common elements or to real property that is association property, except as provided in the declaration. If the declaration does not specify the procedure for approval of material alterations or substantial additions, 75% of the total voting interests of the association must approve the alterations or additions. Therefore this bill provides that acquiring leaseholds, memberships, or other use interest is a material alteration or substantial addition, and therefore, where the declaration is silent regarding the procedure for acquiring these leaseholds, memberships, or other use interest, there must be approval by 3/4 of the total voting interest of the association instead of only 2/3 as required if it were not a material alteration or substantial addition.

Purpose, Scope, and Application of Homeowners' Association Statutes

Section 720.302, F.S., pertains to the purposes, scope, and application for ch. 720, F.S. Section 720.302(3), F.S., provides that ch. 720, F.S., does not apply to the following:

- A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or
- The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

Section 720.302(5), F.S., provides that unless expressly stated to the contrary, corporations not for profit that operate residential homeowners' associations in this state are to be governed by and subject to ch. 617, F.S. and ch. 720, F.S.

This bill amends s. 720.302(3), F.S., to provide that "except as specifically provided in ch. 720, F.S.," ch. 720, F.S, does not apply to the type of communities stated above.

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[7] Section 720.301(8) and (11), F.S.
[8] Section 718.110(1)(a), F.S.

This bill amends s. 720.302(5), F.S., to remove the reference to "not-for-profit" corporations so that a homeowners association can organize as a "for profit" corporation and not just a not-for-profit corporation. In reference to this change, this bill also provides that homeowners' associations in Florida must be governed by and subject to ch. 617, F.S. (non-profit corporations), or ch. 607, F.S. (corporations), if incorporated under that chapter," unless expressly stated to the contrary.

Homeowners' Association Inspection and Copying of Records

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of $50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

Current law expressly exempts the following from inspection by a member or parcel owner:

- Any record protected by attorney-client or work-product privilege;
- Information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or
- Medical records of parcel owners or other community residents.[9]

This bill amends s. 720.303(5), F.S., to provide that an association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by ch. 720, F.S., to be made available or disclosed. This bill also provides that an association or agent may charge a reasonable fee to a prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

This bill provides that an association and its agent are not liable for providing information in good faith if the person providing the information includes a written statement in the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Homeowners' Association Budgets

Section 720.303(6), F.S., provides that an association must prepare an annual budget.

This bill amends s. 720.303(6), F.S., to require that the annual budget provide for the annual operating expenses.

This bill also amends s. 720.303(6), F.S., to provide that the budget may include reserve accounts for capital expenditures and deferred maintenance that the association in responsible for if the governing documents do not limit increases in assessments, including reserve accounts.

[9] Section 720.303(1), (2), (3), (4), F.S.

This bill provides that if the budget does not provide for reserve accounts and is responsible for the repair and maintenance of capital improvements that may result in a special assessment, each financial report for the preceding year must contain the following statement:

> The budget of the association does not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments. Owners may elect to provide for reserve accounts pursuant to the provisions of section 720.303(6), Florida Statutes, upon the approval of not less than a majority of the total voting interests of the association.

This bill also provides that an association is deemed to have provided reserve accounts when they have been initially established by the developer or when the association members elects to provide for reserves. The association members can elect to provide for reserves with approval of at least a majority of the total voting interest of the association. The approval action by the members must state that reserve accounts must be provided for in the budget and must designate the components for which reserve accounts are to be established.

The amount to be reserved must be computed using a formula that is based on the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association must adjust replacement reserve assessments annually.

Once a reserve account is established, the association members can provide for no reserves or less reserves than required by this section, upon a majority vote at a meeting where quorum is present. If the reserves are not voted favorably to be reduced or waived then the reserves as provided in the budget must go into effect. After turnover of control of an association by the developer to the parcel owners, the developer can vote its voting interest to waive or reduce the funding reserves. Any vote to waive or reduce reserves is only applicable to one budget year.

Funding formulas for reserves must be based on either a separate analysis of each required asset, or a pooled analysis of two or more required assets. This bill provides the calculations that must be used to determine the amount of funding to go into reserve accounts whether the association uses a separate analysis of each asset or a pooled analysis of each asset.

Reserve funds and any interest accruing must stay in the reserve account, and can only be used for reserve expenditures unless another use is approved by a majority vote of the association members. Prior to turnover of control of an association, the developer-controlled association must not vote to use reserves for purposes other than for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a meeting of the association.

Homeowners' Association Financial Reporting

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

This bill amends s. 720.303(7), F.S., to increase from 60 to 90 days the time that an association has to prepare and complete an annual financial report after the close of the fiscal year.

This bill also provides that an association that must prepare a complete set of financial statements, do so in accordance with the generally accepted accounting principles "as adopted by the Florida Board of Accountancy."

Homeowners' Association Levy of Fines and Suspension of Use Rights

Section 720.305(2), F.S., provides that an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both to use common areas and facilities for failing or refusing to comply with the governing documents of the community. An association can also levy reasonable fines, not to exceed $100 per violation, against any member or tenant, guest, or invitee for failing or refusing to comply with the governing documents of the association. The fine can be levied each day that the violation continues, however, no fine can exceed $1,000 unless it is allowed in the governing documents. A fine cannot become a lien against a parcel.

This bill amends s. 720.305(2), F.S., to provide an exception to the provision that a fine cannot become a lien against a parcel. This bill provides that a fine may become a lien against a parcel if it is levied for a violation of the governing documents which have been recorded in the public records of the county where the property is located. The fine cannot exceed $1,000.

Mergers

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment.

This bill amends s. 720.306(1)(c), F.S., to provide that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Transition of Homeowners' Association Control

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect the board of directors, the developer must deliver various documents to the board.

This bill amends s. 720.307, F.S., to require additional documents that the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, this bill requires that the developer also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the condominium law. The current law for homeowners' associations pertaining to transition of association control is very similar to the current condominium law and this bill provides conformity between the homeowners' associations and the condominium associations.

Guarantees of Common Expenses

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser in which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.[10]

[10] Section 718.116, F.S.

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration;
- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and
- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

This bill also provides the formula for determining what the developer's final obligation is to the association at the end of the guarantee period.

Publication of False and Misleading Information

Section 720.402, F.S., creates a cause of action to rescind the contract for sale or for damages against a developer for false or misleading material statements. After closing, the purchaser has a cause of action against the developer for one year after the date upon which the last of the following events takes place:

- The closing of the transaction;
- The issuance of a certificate of occupancy or other evidence to allow lawful occupancy of the residence;
- The date of lawful occupancy in counties or municipalities in which certificates of occupancy or other evidence of lawful occupancy are not customarily issued;
- The completion by the developer of the common areas and recreational facilities, whether or not they are common areas, which the developer is obligated to complete or provide under the terms of the written contract;
- The completion by the developer of the common areas and such recreational facilities, whether or not they are common areas, that the developer is obligated to complete under any rule of law if there is no written contract.

Section 720.402, F.S., also limits any cause of action brought under this provision to five years after the closing of the transaction, provides that the prevailing party may recover reasonable attorney's fees, and prohibits the developer from using association funds to defend a suit brought under this section.

This bill amends s. 720.402, F.S., to provide that this section does not limit any rights provided by common law. This section as currently written does not limit the right to sue under other legal theories. It is unclear what effect, if any, this change makes.

C. SECTION DIRECTORY:

Section 1. Creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of ch. 712, F.S.

Section 2. Amends s. 718.114, F.S., to revise condominium association powers pertaining to agreements acquiring possesory or use interests after recording the declaration.

Section 3. Amends s. 720.302, F.S., to revise the purpose, scope, and application of ch. 720, F.S.

Section 4. Amends 720.303(5), F.S., relating to the copying and inspection of homeowners' association records. This section amends s. 720.303(6), F.S., to revise provisions regarding association budgets by providing an association the option of establishing reserve accounts. This section amends 720.303(7), F.S., revising the time period for when an association must prepare and complete a financial report for the preceding fiscal year.

Section 5. Amends s. 720.305, F.S., to revise provisions related to the levy of fines and suspension of use rights.

Section 6. Amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 7. Amends s. 720.307(3), F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.

Section 8. Amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 9. Amends s. 720.402, F.S., to add a provision that the section does not limit any rights provided by common law.

Section 10. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill provides that a fine cannot become a lien against a parcel "unless it is levied for a violation of governing documents that have been recorded in the public records of the county where the property is located." This exception could possibly be a violation of the Contract Clause of the Florida Constitution. Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[11] "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."[12] [13]

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.[14] The *Pomponio* Court indicated that the "well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

> [T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or

[11] Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . . "

[12] 10a Fla. Jur. s. 414, Constitutional Law.

[13] The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

[14] The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.
Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The department indicates that the bill may raise concerns with the single subject limitation in Article III, Section 6, of the Florida Constitution as it combines chapter 712 marketable record title act, chapter 718 condominium amendments, and chapter 720 homeowners' association amendments.

The bill, in permitting an unpaid fine to become an association lien against the parcel, may result in a foreclosure of the parcel for the failure of the homeowner to pay a fine imposed by the association. In addition, permitting an unpaid fine to become a lien is contrary to the findings and legislation proposed by the 2004 Homeowners' Association Task Force (See, the Final Report of the HOA Task Force, pp. 14, 32, available at:
http://www.state.fl.us/dbpr/lsc/hoa/information/hoa_final_report.pdf

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Civil Justice Committee adopted 1 strike-all amendment to this bill. The amendment made the following revisions to the bill:

- Removed the section of the bill repealing s. 720.311, F.S., pertaining to dispute resolution, and removed revisions made to other sections that referenced s. 720.311, F.S.
- Removed "not-for-profit" from s. 720.302(5), F.S.
- Removed the section in the bill revising s. 720.303(2), F.S.
- Amended s. 720.303(6), F.S., regarding homeowners' association budgets, to provide for reserve accounts and funding for those accounts.
- Amended s. 720.303(7), F.S., regarding financial reporting by homeowners associations, to remove the provision from the bill that the association provide each member with a copy of the annual report within "21 days after the report is prepared but no later than 120 days after the end of the fiscal year."
- Removed provisions relating to the homeowners association members' right to speak on meeting agenda items.
- Amended s. 720.307(3), F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.
- Amended s. 720.308, F.S., to establish guarantees of common expenses for homeowners associations.
- Removed revision to s. 720.405, F.S., regarding the requirements to a proposed revived declaration.

This bill was then reported favorably with a committee substitute.

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to community associations; creating s. 712.11, F.S.; authorizing certain associations to revive lapsed covenants; amending s. 718.114, F.S.; providing that certain leaseholds, memberships, or other possessory or use interests shall be considered a material alteration or substantial addition to certain real property; amending s. 720.302, F.S.; revising application; amending s. 720.303, F.S.; authorizing associations to charge specified fees for providing certain information to prospective purchasers or lienholders; limiting liability for providing such information; revising what must be included in an association's annual budget; providing for reserve accounts for capital expenditures and deferred maintenance; revising certain time requirements relating to annual reports of associations; amending s. 720.305, F.S.; prohibiting a fine levied by an association from becoming a lien unless the governing documents claimed to have been violated are recorded in the public records;

amending s. 720.306, F.S.; providing that certain mergers or consolidations do not alter specified voting interests; amending s. 720.307, F.S.; providing additional documents that the developer must deliver at the time the association members elect the board of directors; amending s. 720.308, F.S.; providing that a guarantee of common expenses shall be effective under certain circumstances; requiring the guarantee to meet certain requirements; authorizing the guarantee to provide certain requirements; requiring the stated dollar amount of the guarantee to be an exact dollar amount for each parcel identified in the declaration; providing payments required from the guarantor to be determined in a certain manner; providing a formula to determine the guarantor's total financial obligation to the association; providing that certain expenses incurred in the production of certain revenues shall not be included in the operating expenses; amending s. 720.402, F.S., relating to publication of false or misleading information; clarifying that the section does not limit common-law rights; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 712.11, Florida Statutes, is created to read:

712.11 Covenant revitalization.--A homeowners' association that is not subject to chapter 720 may use the procedures in ss.

720.403-720.407 to revive covenants that have lapsed pursuant to this chapter.

Section 2. Section 718.114, Florida Statutes, is amended to read:

718.114 Association powers.--An association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests not entered into within 12 months following the recording of the declaration shall be considered a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possessory or use interests except as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this

chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 3. Subsections (3) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.--

(3) Except as specifically provided in this chapter, this chapter does not apply to:

(a) A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or

(b) The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

(5) Unless expressly stated to the contrary, corporations ~~not for profit~~ that operate residential homeowners' associations in this state shall be governed by and subject to chapter 617 and this chapter or chapter 607 if incorporated under that chapter. This subsection is intended to clarify existing law.

Section 4. Subsections (5), (6), and (7) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--

(5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access.

This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept,

or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside vendor and may charge the actual cost of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Disciplinary, health, insurance, and personnel records of the association's employees.

4. Medical records of parcel owners or community residents.

(d) The association is not required to give a prospective purchaser or lienholder information about the subdivision or the association other than that required to be disclosed under this chapter. It may charge the prospective purchaser, lienholder, or current parcel owner or member a reasonable fee not to exceed $150 to provide such information, other than information required by law, plus the reasonable cost of photocopying and attorney's fees incurred by the association in connection with the response.

(e) An association is not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. If the budget of the association includes reserve accounts, such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with the provisions of this subsection.

(c) If the budget of the association does not provide for reserve accounts governed by this subsection and is responsible for the repair and maintenance of capital improvements that may result in a special assessment, each financial report for the preceding fiscal year required by subsection (7) shall contain the following statement in conspicuous type: THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

(d) An association shall be deemed to have provided for reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the

developer, the membership of the association may elect to do so upon the affirmative approval of not less than a majority of the total voting interests of the association. Such approval may be attained by vote of the members at a duly called meeting of the membership or upon a written consent executed by not less than a majority of the total voting interests in the community. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and shall designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall provide for the required reserve accounts to be included in the budget in the next fiscal year following the approval and in each year thereafter. Once established as provided in this paragraph, the reserve accounts shall be funded or maintained or shall have their funding waived in the manner provided in paragraph (f).

(e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.

(f) Once a reserve account is established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the unit owners has been called to determine whether to waive or reduce the

funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover of control of an association by a developer to parcel owners, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this paragraph to waive or reduce reserves shall be applicable only to one budget year.

(g) Funding formulas for reserves authorized by this subsection shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account shall be the sum of the following two calculations:

a. The total amount necessary, if any, to bring a negative component balance to zero.

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component. The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may consider factors such as inflation and earnings on invested funds.

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the

contribution to the pooled reserve account as disclosed in the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful life of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

(7) FINANCIAL REPORTING.--The association shall prepare an annual financial report by a date specified in the bylaws or within 90 ~~60~~ days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual

financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Florida Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $100,000 or more, but less than $200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $200,000, but less than $400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and

expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 5. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member.--

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed $100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a

parcel unless it is levied for a violation of governing documents that have been recorded in the public records of the county where the property is located. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(c) Suspension of common-area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

Section 6. Subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.--

(1) QUORUM; AMENDMENTS.--

(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association.

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests. <u>The merger or consolidation of associations under a plan of merger or consolidation pursuant to chapter 607 or chapter 617 is not a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.</u>

Section 7. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:

720.307 Transition of association control in a community.--With respect to homeowners' associations:

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:

(t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes, and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments. This paragraph applies to associations with a date of incorporation after December 31, 2006.

Section 8. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.--

(1) ASSESSMENTS.--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

(2) GUARANTEE OF COMMON EXPENSES.--

(a) Establishment of a guarantee.--If a guarantee of the assessments of parcel owners is not included in the purchase contracts or declaration, any agreement establishing a guarantee shall be effective only upon the approval of a majority of the

voting interests of the members other than the developer. Approval shall be expressed at a meeting of the members, voting in person or by limited proxy, or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this section.

(b) Guarantee period.--The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

1. The ending date or event shall be the same for all of the members of a homeowners' association, including members in different phases of the development.

2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

(c) Guarantee extension.--The guarantee may provide that after the initial stated period the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar amount of the guarantee shall be an exact dollar amount for each parcel identified in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate ownership share of the assessments.

(4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.

(b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Any portion of the parcel assessments that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

(5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula: the guarantor shall pay any deficits that exceed the guaranteed amount, less the total

regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period, regardless of whether the actual level charged was less than the maximum guaranteed amount.

(6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the operating expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Any portion of the parcel assessment that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

Section 9. Subsection (3) is added to section 720.402, Florida Statutes, to read:

720.402 Publication of false and misleading information.--

(3) This section does not limit any rights provided by common law.

Section 10. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **957 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Appropriations Committee

Representative(s) Anderson offered the following:

Amendment (with directory and title amendments)

Remove line(s) 297 - 304 and insert:

(7) FINANCIAL REPORTING. -- Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a ~~an annual~~ financial report for the preceding fiscal year. Within 21 ~~60~~ days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, ~~close of the fiscal year.~~ the association shall, within the time limits set forth the subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **957 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Appropriations Committee

Representative(s) Anderson offered the following:

Amendment (with directory and title amendments)

Remove line(s) 522 and insert:

proportionate ownership share of the common elements.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1109 Title Loan Lenders
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 1634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	7 Y, 4 N	Olmedillo	Carlson
2) State Administration Appropriations Committee		Rayman	Belcher
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Chapter 537, Florida Statutes, the "Florida Title Loan Act" (the "Act"), became effective October 1, 2000, ch. 2000-138, LOF. Prior to ch. 2000-138, LOF, title lenders could charge interest rates up to 22 percent per month. The Act capped interest rates at a maximum of 30 percent per year. Subsequently, title loan licensees left the state or obtained licenses under the consumer finance or deferred presentment laws. Currently, there are no lenders registered under Chapter 537, F.S. This bill would encourage the title loan industry to return to Florida.

The bill raises the maximum allowable interest rates by authorizing a title lender to compute interest rates monthly rather than yearly, as follows:

- 22 percent per month computed on the first $2,000 of the principal amount;
- 20 percent per month on that part of the principal amount exceeding $2,000 and not exceeding $3,000; and
- 18 percent per month on that part of the principal amount exceeding $3,000.

The bill requires additional notices in larger bold type to be included in title loan agreements. The bill authorizes rollovers only if the borrower pays 5 percent of the unpaid balance each time. It prohibits certain legal actions to collect a deficiency.

The bill also provides protection for service-members and their spouses by:

- Maintaining current interest rates applicable only to them; and
- Prohibiting a lender from taking possession of a service-member's or service-member spouse's vehicle, if the service-member is deployed to combat or combat-support posting.

The bill prohibits title loan business from being conducted with any other business. The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

The Office of Financial Regulation fiscal projections are based on the 600 applicants requesting registration in Fiscal Year 2006-07 which will provide $840,000 in regulation and investigation fees to be deposited into the Regulatory Trust Fund. Based on the estimate of 600 initial applicants/registrants, the Office of Financial Regulation anticipates it would require a total of ten positions and $706,775 to regulate title lending as proposed by the bill. Biennial renewal results in the cost of regulation being greater than revenues. The bill does not provide an appropriation.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill imposes new regulations on title loan lenders.

Individual Liberty: The bill will increase options for Floridians who seek short term high interest rate loans.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Title Loans

A title loan is a "loan of money secured by a bailment of a certificate of title to a motor vehicle."[1] The Florida Title Loan Act was enacted on October 1, 2000, to regulate title loan lenders in Florida.[2] Under the Act, a title loan lender must be licensed to conduct business, to own or operate a title loan office.[3] The Office of Financial Regulation (OFR) may issue a non-transferable license for a period not to exceed 2 years to a title loan lender who files a completed application pursuant to the Act and pays the appropriate fees.[4] Each office must have a separate loan license.[5] Florida also requires that an applicant file with OFR a bond, in the amount of $100,000, or establish a certificate of deposit or irrevocable letter of credit for the amount of the bond.[6] The beneficiary of any such documents must be OFR.[7]

Agreement

Currently, a title loan lender shall execute an agreement with the borrower, which must provide certain disclosures and information, including the amount of the loan, annual percentage rate, finance charge, total amount of all payments, maturity date (30 days from the date of execution), and consequences of failing to pay under the agreement.[8]

Licensees may charge interest rates of 30 percent per annum computed on the first $2,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding $2,000 and not exceeding $3,000; and 18 percent per annum on that part of the principal amount exceeding $3,000.[9] The Act authorizes multiple rollovers for 30 day periods with the parties' mutual consent.[10]

If the consumer defaults, repossession of the vehicle is not permitted until the loan is at least 30-days overdue.[11] The title lender must also notify the borrower of the ability to pay off the loan prior to selling the vehicle.[12] The sale of the vehicle must be through a licensed motor vehicle dealer; however, the title loan lender cannot also be a licensed motor vehicle dealer.[13] Any excess money from the sale of the vehicle must be returned to the borrower.[14]

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[1] *See* ch. 537, F.S.
[2] *See* Id.
[3] *See* Id.
[4] *See* Id.
[5] *See* Id.
[6] *See* Id.
[7] *See* Id.
[8] *See* Id.
[9] *See* Id.
[10] *See* Id.
[11] *See* Id.
[12] *See* Id.
[13] *See* Id.
[14] *See* Id.

Fees

Title loan lender application and licensee fees are as follows:

- $1,200 registration fee (biennial)
- $200 investigation fee (at time of initial application)
- $1,200 renewal fee
- $1,200 renewal + $600 reactivation (if licensed became inactive)[15]

Violations

The Act provides a number of violations and prohibited activities, including, but not limited to fraud, misrepresentation, imposition of illegal excessive charges, failure to maintain books are records, refusal to provide information, aiding, abetting or conspiring to circumvent the Act, failing to maintain a bond, certificate of deposit or letter of credit, and failing to pay a fee as provided by the Act.[16] The Act further provides OFR with the authority to deny, revoke or suspend a license, place a licensee or applicant on probation, issue a reprimand, or impose an administrative fee if a title loan lender violations any of the foregoing prohibited activities.[17]

Remedies

The Act provides that an unlicensed title loan transaction is void, forfeiting both principal and interest.[18] In addition, a borrower who was a party to such transaction is entitled to collect attorney's fees and cost in any action to recover from the person who issued the loan.[19] Moreover, the Act provides that an unlicensed title loan lender who enters into title loan transactions commits a felony of the third degree.[20]

No State Pre-emption

The Act specifically authorizes local governments to enact stricter laws governing these transactions.[21]

Florida Consumer Finance Act

Under Chapter 516, F.S, the Florida Consumer Finance Act, a consumer can borrow up to $25,000 at the same rates of interest rates provided under the current Title Loan Act (i.e., maximum of 30% per year.)[22] The Office currently licenses over 500 locations under Chapter 516. License fees under the Consumer Finance Act are significantly lower than those required by the Title Loan Act. Under the Consumer Finance Act, license fees are $825 for initial applications and $625 for renewals.[23] Under the Title Loan Act, license fees are $1,400 for initial applications and $1,200 for renewals.[24] Additionally, the Consumer Finance Act requires a $25,000 bond per location; whereas, the Title Loan Act requires a $100,000 bond per location.[25]

Deferred Presentment Transactions

Deferred presentment transactions, known as "payday loans," are short term, high interest rate consumer loans. The Deferred Presentment Act (Act),[26] which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider[27]) must register with OFR and is subject to its regulation.[28]

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[15] *See* Id.
[16] *See* Id.
[17] *See* Id.
[18] *See* Id.
[19] *See* Id.
[20] *See* Id.
[21] *See* s. 537.018, F.S. *See also* s. 494.00797, F.S.
[22] *See* s. 516.031, F.S.
[23] *See* s. 516.003, F.S.
[24] *See* s. 537.005, F.S.
[25] *See* Id.
[26] *See* Part IV of chapter 560, F.S.
[27] Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. *See* Section 560.402(6), F.S.

The maximum face amount of a check taken for deferred presentment cannot exceed $500, excluding allowable fees.[29] The maximum fee is 10 percent of the face amount, plus a maximum $5.00 verification fee.[30] Upon receipt of the customer's (drawer[31]) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.[32] The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.[33]

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated in less than 24 hours.[34] To verify such information, the provider must access a database established by OFR[35] and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.[36]

For a $500 payday loan with a term of 30 days, the consumer would pay $55 in fees, which is an effective rate of interest of 134%. By contrast, in a title loan, which is secured by the consumer's vehicle, the cost of borrowing the money would $125 and the effective rate of interest would be 264%. Additional fees and costs would also be applicable in a title loan transaction if the borrower was unable to repay the debt and the lender sold the borrower's vehicle to recover the debt.

Payday lenders are prohibited from taking additional collateral and engaging in rollover transactions.[37] Other consumer protections for payday loans include a 24-hour waiting period between transactions.[38] There is also a 60-day grace period if the consumer notifies the vendor before the due date that the consumer is unable to make the check good.[39] In these cases, the consumer must participate in credit counseling in order to be afforded the grace period.[40] The Office maintains a state-wide database to ensure that consumers do not have more than one outstanding payday loan at any one time and that they adhere to the 24-hour waiting period.[41]

The Office currently licenses over 1,200 payday lender locations.

Effects of Proposed Changes:

Notice

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[28] *See* Section 560.403, F.S.
[29] *See* Section 560.404(5), F.S.
[30] *See* Section 560.404(6), F.S. The maximum $5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.
[31] A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.
[32] *See* Section 560.404(8), F.S.
[33] *See* Section 560.404(18), F.S.
[34] *See* Section 560.404(19), F.S.
[35] OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.
[36] Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number. Telephone conversation with staff of OFR, January 27, 2006.
[37] *See* s. 560.404, F.S.
[38] *See* Id.
[39] *See* Id.
[40] *See* Id.
[41] *See* Id.

The bill requires additional notices in larger type to be included in title loan agreements, stating that the loan is not intended to meet long-term financial needs; that the loan should only be used to meet short-term cash needs; that the borrower will be required to pay additional interest and fees if he or she renews the loan; that the loan is a higher interest rate loan; that the borrower is placing at risk his or her continued ownership of the pledged personal property; that if the borrower fails to pay the full amount of the loan on or the end of the maturity date or renewal of the loan, the title pledge lender may take possession of the property the title for which is pledged and sell the property in the manner provided by law; and that the borrower has a legal right of rescission.

Increase in Interest Rates
The bill raises the maximum allowable interest rates from the present rate of 30 percent per annum on the first $2,000 of the principal amount to 22 percent per month; from 24 percent per annum to 20 percent per month on that part of the principal amount exceeding $2,000 and not exceeding $3,000; and from 18 percent per annum to 18 percent per month on that part of the principal amount exceeding $3,000. However, it requires additional disclosures in title loan agreements and maintains the current interest rate limitations for members of the United States Armed Forces and their spouses.

Rollovers
The bill authorizes rollovers only if the borrower pays at least 5 percent of the original unpaid balance each time a rollover occurs. The lender may, but is not obligated to, defer any required principal reduction payments and collect it at the time the loan is finally paid off; however, the lender can not charge any additional interest on the deferred principal amounts.

Prohibited Actions
The bill prohibits legal actions to recover deficiency balances. In addition, the bill prohibits the title lender from taking possession of a vehicle of a service-member or spouse of a service-member, if the service-member is deployed to a combat or combat support posting. Moreover, title lenders may not contact the commanding officer of a service-member or spouse about a title loan or do business with a service-member if the commanding officer declares the specific location off limits and notifies the business. The bill also prohibits title loan lenders from conducting title loan business within any location in which any other business is solicited, conducted, or to conduct title loan business in association or conjunction with such other business, or share common areas or employees with any other business.

State Pre-emption
The bill will pre-empt local government laws that more strictly regulate title loan transactions by repealing s. 537.018, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 494.00797, F.S., removing local government authority to regulate title loans.

Section 2. Amends s. 537.008, F.S., requiring certain disclosures.

Section 3. Amends s. 537.011, F.S., regarding interest rates and limitations.

Section 4. Amends s. 537.012, F.S., tolling time requirements for the military in the event of title lender repossession and title lender disposal of pledged property.

Section 5. Amends s. 537.013, F.S., relating to title loan lender prohibited acts, including prohibition regarding legal actions to collect deficiency balances and prohibitions against military.

Section 6. Creates s. 537.019, F.S., prohibiting conducting title loan business with another business.

Section 7. Repeals s. 537.018, F.S., to pre-empt local laws regarding title loans.

Section 8. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE AGENCIES:	FY 2006-07	FY 2007-08
1. Revenues		
Regulatory Trust Fund		
a. Recurring	$ 720,000	$ 150,000
b. Non-Recurring	120,000	25,000
Total Revenue	840,000	175,000
2. Expenditures:		
Recurring		
Salaries and Benefits (10 FTE) (Salary rate 415,996)	$ 544,985	$ 544,985
Expenses	100,030	100,030
Human Resources Services	3,930	3,930
Total – recurring	$ 648,945	$ 648,945
Non-Recurring		
Expenses	$ 33,430	
Operating Capital Outlay	24,400	
Total – non-recurring	$ 57,830	
Total Expenditures:		
Regulatory Trust Fund	$ 706,775	$ 648,945

B. ESTIMATED FISCAL IMPACT ON LOCAL GOVERNMENTS:

None.

C. ESTIMATED FISCAL IMPACT ON PRIVATE SECTOR:

The proposed bill will significantly impact consumers who make use of these loans. Currently, the maximum interest rate allowed is 30% per annum. The bill will increase the maximum permissible rate to 22% per month on loans up to $2,000, 20% per month on loans between $2,000 and $3,000, and 18% per month on loans between $3,000 and $5,000.

D. FISCAL COMMENTS:

The Office of Financial Regulation projections are based on the 600 applicants requesting registration in FY 2006-07 (shortly after the effective date of the proposed bill), with 125 new applications per year in remaining years. The registration fee is $1,200 (biennial) plus $200 investigative fee. All active registrants would be required to renew in FY 2008-09. Based on the allowable interest rates, growth in the industry is anticipated but the level of growth is not known at this time. Currently there are no lenders registered under Chapter 537, FS.

Based on the estimate of 600 initial applicants/registrants, the Office anticipates it would require a total of ten positions and $706,775 to regulate title lending as proposed by the bill. Staff would be needed to review and process applications for registration, and would be placed around the State to examine the on-going operations and investigate consumer complaints related to title loans.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill needs an appropriation amendment to provide 10 positions and $760,775 from the Regulatory Trust Fund for the Office of Financial Regulation to carry out the regulatory responsibilities of the bill. The bill does not currently provide an appropriation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to title loan lenders; amending s. 494.00797, F.S.; including title loan lenders within a prohibition against counties and municipalities regulating certain entities subject to the jurisdiction of the Office of Financial Regulation of the Financial Services Commission; amending s. 537.008, F.S.; specifying information to be printed in title loan agreements; amending s. 537.011, F.S.; revising maximum interest rates chargeable on title loans; providing alternative requirements for title loans made to certain military personnel; providing limitations; requiring the commission to establish rules for rates; providing payment requirements for title loan borrowers; providing interest and fee calculation methodologies; providing criteria and limitations for deferring required principal payments; amending s. 537.012, F.S.; providing for tolling certain title loan payment time requirements for certain military personnel; amending s. 537.013, F.S.; specifying an additional prohibited activity by a title loan lender; prohibiting certain activities by a title loan lender relating to military personnel; providing penalties; creating s. 537.019, F.S.; prohibiting title loan lenders from engaging in certain business activities; repealing s. 537.018, F.S., relating to preserving authority for more restrictive county or municipal ordinances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 494.00797, Florida Statutes, is amended to read:

494.00797 General rule.--All counties and municipalities of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the office, including for activities subject to this chapter~~, except entities licensed under s. 537.004~~;

Proof of noncompliance with this act can be used by a city, county, or municipality of this state to disqualify a vendor or contractor from doing business with a city, county, or municipality of this state.

Section 2. Paragraph (c) of subsection (2) of section 537.008, Florida Statutes, is amended to read:

537.008 Title loan agreement.--

(2) The following information shall also be printed on all title loan agreements:

(c)1. The following statement in not less than 12-point type that:

a.~~1.~~ If the borrower fails to repay the full amount of the title loan on or before the end of the maturity date or any extension of the maturity date and fails to make a payment on the title loan within 30 days after the end of the maturity date or any extension of the maturity date, whichever is later, the title loan lender may take possession of the borrower's motor vehicle and sell the vehicle in the manner provided by law. If the vehicle is sold, the borrower is entitled to any proceeds of the sale in excess of the amount owed on the title loan and the reasonable expenses of repossession and sale.

b.~~2.~~ If the title loan agreement is lost, destroyed, or stolen, the borrower should immediately so advise the issuing title loan lender in writing.

2. The following statements in not less than 14-point bold type:

a. This loan is not intended to meet long-term financial needs.

b. You should use this loan only to meet short-term cash needs.

c. You will be required to pay additional interest and fees if you renew this loan rather than pay the debt in full when due.

d. This loan is a higher interest loan. You should consider lower cost loans which may be available to you.

e. You are placing at risk your continued ownership of the personal property the title for which you are pledging for this loan.

f. If you fail to repay the full amount of this loan on or

before the end of the maturity date or renewal of the loan, the title pledge lender may take possession of the property the title for which is pledged and sell the property in the manner provided by law.

g. If you enter into a title pledge agreement, you have a legal right of rescission. This means you may cancel your contract at no cost to you by returning the money you borrowed by the next business day after the date of your loan.

All owners of the titled personal property must sign the title loan agreement.

Section 3. Subsections (1) and (2) of section 537.011, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

537.011 Title loan charges.--

(1) Except as provided in paragraph (6)(a), a title loan lender may charge a maximum interest rate of 22 ~~30~~ percent per month ~~annum~~ computed on the first $2,000 of the principal amount, 20 ~~24~~ percent per month ~~annum~~ on that part of the principal amount exceeding $2,000 and not exceeding $3,000, and 18 percent per month ~~annum~~ on that part of the principal amount exceeding $3,000. The original principal amount is the same amount as the amount financed, as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest, the computations must be simple interest and not add-on interest or any other computations. When two or more interest rates are to be applied to the principal

amount, the lender may charge interest at that single monthly ~~annual~~ percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(2) The annual percentage rate that may be charged for a title loan may equal, but not exceed, the annual percentage rate that must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of interest that may be charged is 12 times the maximum monthly rate~~, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month~~. The commission shall establish by rule the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

(6)(a) The title loan lender shall determine whether the borrower is a member of the military services of the United States. If the borrower is a member of the military services of the United States or the spouse of a member of the military services of the United States, a title loan lender may charge a maximum interest rate of 30 percent per annum computed on the first $2,000 of the original principal amount, 24 percent per annum on that part of the original principal amount exceeding $2,000 and not exceeding $3,000, and 18 percent per annum on that part of the original principal amount exceeding $3,000. The

original principal amount is the same amount as the amount financed, as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum interest specified by this subsection, the computations must be simple interest. Add-on interest or any other computations may not be used. When two or more interest rates are to be applied to the original principal amount, the lender may charge interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(b) The annual percentage rate that may be charged for a title loan to a member of the military services of the United States or the spouse of a member of the military services of the United States may equal, but not exceed, the annual percentage rate that must be computed and disclosed as required by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. The maximum annual percentage rate of interest that may be charged is 12 times the maximum monthly rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. The commission shall establish by rule the rate for each day in a fraction of a month when the period for which the charge is computed is more or less than 1 month.

(7) Notwithstanding any other provision of this chapter,

beginning with the first renewal or continuation and at each successive renewal or continuation thereafter, the borrower shall make a payment of at least 5 percent of the original principal amount of the title pledge transaction in addition to interest and fees authorized by this chapter. Interest and fees authorized by this chapter at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the required 5-percent principal reduction shall be credited to the outstanding principal on the day received. If, at the maturity of any renewal requiring a principal reduction, the borrower has not made previous principal reductions adequate to satisfy the current required principal reduction and the borrower cannot repay at least 5 percent of the original principal balance and any outstanding interest and fees authorized by this chapter, the title loan lender may, but is not obligated to, defer any required principal payment until the end of the title loan agreement. No further interest or fees may accrue on any such principal amount deferred.

Section 4. Subsection (8) is added to section 537.012, Florida Statutes, to read:

537.012 Repossession, disposal of pledged property; excess proceeds.--

(8) If a borrower who is an active member of the military services of the United States has been deployed to a combat or combat support posting or is a member of the Reserves or National Guard and has been called to active duty, the time requirements set forth in subsections (1), (2), and (3) are

tolled for the duration of the deployment or active duty service.

Section 5. Paragraph (o) is added to subsection (1) of section 537.013, Florida Statutes, and subsection (3) is added to that section, to read:

537.013 Prohibited acts.--

(1) A title loan lender, or any agent or employee of a title loan lender, shall not:

(o) Sue for deficiency balances if the sale of the titled personal property is less than the principal amount due on the loan.

(3) If a title loan lender transacts a title loan with a member of the military services of the United States, the lender shall not:

(a) Take possession of a vehicle of the member or the spouse of such member when the member has been deployed to a combat or combat support posting or is a member of the Reserves or National Guard and has been called to active duty for the duration of the deployment or active duty service;

(b) Contact the commanding officer of a borrower who is a member of the military services of the United States or anyone in the borrower's chain of command in an effort to collect on an obligation under a title loan transaction entered into with the member or the member's spouse; or

(c) Enter into a title loan agreement with a member of the military services of the United States if a military base commander has declared that a specific location of the title

loan lender's business is off limits to military personnel and has formally notified the title loan lender of such declaration.

Section 6. Section 537.019, Florida Statutes, is created to read:

537.019 Conducting business with another business.--A title loan lender may not conduct the business of making title loans under this act within any office, room, suite, or place of business in which any other business is solicited or engaged in, or in association or conjunction with such other business, or share common areas or employees with any other business.

Section 7. Section 537.018, Florida Statutes, is repealed.

Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 CS Division of Alcoholic Beverages and Tobacco
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Cunningham	Kramer
2) State Administration Appropriations Committee		Rayman	Belcher
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries.

Currently, employees of the Division may be certified as law enforcement officers. Such Alcoholic Beverages and Tobacco (AB&T) officers have *felony* arrest powers statewide. AB&T officers also have all of the powers of a deputy sheriff to:

- Enforce all criminal laws of the state within specified jurisdictions where the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police department; and
- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
    - Laws *relating to alcoholic beverages and tobacco products*; and
    - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.

This bill provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to alcoholic beverages and tobacco products, and all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in coordination with the local sheriff's office.

The DBPR indicates there is no significant fiscal impact on the state.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

Maintain Public Security: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

B. EFFECT OF PROPOSED CHANGES:

The Division, housed within the DBPR, licenses the alcoholic beverage and tobacco industries,[1] collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chapters 210, 561-565, and 567-569, F.S.[2] The Division carries out these responsibilities through three bureaus: Licensing, Auditing, and Enforcement.[3]

Currently, employees of the Division may be certified as law enforcement officers under chapter 943, F.S.[4] (for purposes of this analysis, such employees will be referred to as AB&T officers). AB&T officers currently have statewide *felony* arrest powers, described in s. 901.15, F.S., which authorize them to arrest a person without a warrant if:

- they reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing a felony;
- while engaged in the exercise of his or her state law enforcement duties, the AB&T officer reasonably believes that a felony has been or is being committed; or
- a felony warrant for the arrest has been issued and is being held for execution by another peace officer.[5]

AB&T officers also have all of the powers of a deputy sheriff to:

- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
  - Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
  - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.
- Enforce all criminal laws of the state within specified jurisdictions when the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police department, or when the Division participates in the Florida Mutual Aid Plan during a declared state of emergency.[6]

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[1] Florida has approximately 71,000 active alcoholic beverage and tobacco license holders.
[2] http://www.myflorida.com/dbpr/abt/index.shtml
[3] *Id.*
[4] In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of law enforcement officers (LEO). Every prospective LEO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. http://www.fdle.state.fl.us/cjst/commission/index.html
[5] *See* ss. 20.165 and 901.15, F.S.
[6] s. 20.165, F.S.

A review of the above authorities reveals that AB&T officers do not currently have the authority to enforce certain laws or respond (e.g. pursue, detain, and arrest) to certain crimes. For example, an AB&T officer may not enforce misdemeanor violations when not on the premises of a Division-licensed entity. In such instances, the AB&T officer would be limited to simply notifying local law enforcement of the crime. This limited authority has also caused concern in that AB&T officers must consider whether responding to a crime is within the scope of their authorized duties, whether the Division would support their actions, whether they will incur any liability for their actions, etc...

Effect of the Bill

The bill provides that Division employees serving as law enforcement officers must meet the qualifications for employment as a law enforcement officer set forth under s. 943.13, F.S.,[7] and must be certified as a law enforcement officer by the Florida Department of Law Enforcement (FDLE). This portion of the bill appears to have little effect in that AB&T officers who are currently certified as law enforcement officers are certified as such by FDLE and must meet the requirements of s. 943.13, F.S.

The bill also provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that AB&T officers also have the arrest authority provided for state law enforcement officers in s. 901.15, F.S. (discussed above). The bill further provides that an AB&T officer has full law enforcement powers granted to other peace officers in the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

Although the bill expands an AB&T officer's powers and jurisdiction, the bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. An AB&T officer's primary responsibilities also include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., requiring AB&T officers serving as law enforcement officers to meet certain qualifications; requiring AB&T officers to be certified as law enforcement officers; providing AB&T officers with certain powers, authority, and jurisdiction; and specifying primary responsibilities of AB&T officers.

Section 2. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[7] Section 943.13, F.S. provides minimum employment qualifications for officers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation indicates there is no significant fiscal impact on the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment provides than an AB&T officer's primary responsibilities also include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

The staff analysis reflects the CS.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 20.165, F.S.; requiring each employee serving as a law enforcement officer for the division to meet the qualifications of a law enforcement officer set forth in ch. 943, F.S., for employment or appointment; requiring each such employee to be certified as a law enforcement officer by the Department of Law Enforcement; providing the law enforcement officer with certain powers, authority, and jurisdiction; specifying the primary responsibility for law enforcement officers of the division; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(9)(a) All employees authorized by the Division of Alcoholic Beverages and Tobacco shall have access to, and shall have the right to inspect, premises licensed by the division, to collect taxes and remit them to the officers entitled to them, and to examine the books and records of all licensees. The authorized employees shall require of each licensee strict compliance with the laws of this state relating to the transaction of such business.

(b) Each employee serving as a law enforcement officer for the division must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities. All employees certified under chapter 943 as law enforcement officers shall have the primary responsibility ~~felony arrest powers under s. 901.15(10) and shall have all the powers of deputy sheriffs~~ to:

~~1.~~ investigate, enforce, and prosecute, throughout the state, violations and violators of:

1.~~a.~~ Parts I and II of chapter 210; part VII of chapter 559; and chapters 561-569; and the rules adopted ~~promulgated~~ thereunder, as well as other state laws that ~~which~~ the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.

2.~~b.~~ All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation or ~~and in~~ coordination with the appropriate local sheriff's office~~, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.~~

~~2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff,~~ or municipal police department~~,~~ or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.1(for drafter's use only)

Bill No. **1271 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Appropriations Committee

Representative Cannon offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (9) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(9)

(b) Each employee serving as a law enforcement officer for the division must meet the qualifications for employment or appointment as a law enforcement officer set forth under s. 943.13 and must be certified as a law enforcement officer by the Department of Law Enforcement under chapter 943. Upon certification, each law enforcement officer is subject to and has the same authority as provided for law enforcement officers generally in chapter 901 and has statewide jurisdiction. Each officer also has arrest authority as provided for state law enforcement officers in s. 901.15. Each officer possesses the

full law enforcement powers granted to other peace officers of this state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

1. The primary responsibility of each officer appointed under this section is ~~All employees certified under chapter 943 as law enforcement officers shall have felony arrest powers under s. 901.15(10) and shall have all the powers of deputy sheriffs~~ to~~:~~

~~1.~~ investigate, enforce, and prosecute, throughout the state, violations and violators of~~:~~

~~a.~~ parts I and II of chapter 210~~,~~ ~~,~~ part VII of chapter 559~~,~~ ~~,~~ and chapters 561-569~~,~~ ~~,~~ and the rules adopted ~~promulgated~~ thereunder, as well as other state laws that ~~which~~ the division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.

2.~~b.~~ The secondary responsibility of each officer appointed under this section is to enforce all other state laws, provided ~~that~~ the officer ~~employee~~ exercises the powers of a deputy sheriff, only after consultation or ~~and in~~ coordination with the appropriate local sheriff's office~~, and only if the violation could result in an administrative proceeding against a license or permit issued by the division.~~

~~2. Enforce all criminal laws of the state within specified jurisdictions when the division is a party to a written mutual aid agreement with a state agency, sheriff,~~ or municipal police department~~,~~ or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

Section 2. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Amendment No.1(for drafter's use only)

Remove the entire title and insert:

A bill to be entitled

An act relating to the Division of Alcoholic Beverages and Tobacco; amending s. 20.165, F.S.; requiring each employee serving as a law enforcement officer for the division to meet the qualifications of a law enforcement officer set forth in ch. 943, F.S., for employment or appointment; requiring each such employee to be certified as a law enforcement officer by the Department of Law Enforcement; providing the law enforcement officer with certain powers, authority, and jurisdiction; specifying the primary and secondary responsibilities for law enforcement officers of the division; providing an effective date.